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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Petitioner,

—v.—

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, NEIL G. GALATZ and ELAINE GALATZ,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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88 pp

QUESTIONS PRESENTED

1. Where the Nevada plaintiffs' cause of action against an out-of-state membership corporation relates to events occurring entirely in California or New York, did the Supreme Court of Nevada, in exercising *in personam* jurisdiction, meet the requirements of the Fourteenth Amendment to the United States Constitution when it held that the cause of action arises out of or relates to the defendant's transaction of business within Nevada, merely because:

(a) the defendant corporation has a constitution and rules upon which its members rely; and

(b) the plaintiffs are members of the defendant corporation and reside in Nevada?

2. Does the mere residence within Nevada of dues-paying members of a New York not-for-profit membership corporation and the occasional hiring of independent veterinarians to test horses for drugs at Nevada horse shows (which shows are neither owned, operated nor managed by the defendant corporation), constitute a "transaction of business" in Nevada by the corporation sufficient, standing alone, to form a basis under the Fourteenth Amendment for Nevada's assertion of *in personam* jurisdiction over such corporation under its long-arm statute?

PARTIES

The parties to the proceedings below in the Supreme Court of Nevada are set forth in the caption except that the petitioner The American Horse Shows Association, Inc. (hereinafter the "AHSA") was not a party to the proceedings below, but was designated as the real party in interest by the Supreme Court of Nevada.

Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, the AHSA has no parent companies, subsidiaries or affiliates. The AHSA is a member of the United States Olympic Committee and of the Federation Equestre Internationale.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

Petitioner The American Horse Shows Association, Inc. ("AHSA") respectfully prays that a writ of certiorari issue to review the writ of mandate of the Supreme Court of Nevada entered on July 30, 1984, requiring the Eighth Judicial District Court of the State of Nevada to accept personal jurisdiction over the AHSA.

OPINIONS BELOW

The Eighth Judicial District Court of the State of Nevada in and for the County of Clark rendered an oral decision in open court, appearing in the Appendix at pages 12a-13a.[1] A copy of the order of that court dated February 1, 1982 granting the AHSA's motion to quash service of the summons and complaint is set forth in the Appendix at 10a-11a. The opinion of

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1 Pages of the Appendix herein are cited as "____a".

the Supreme Court of the State of Nevada is reported officially at 100 Nev. Adv. Ops. No. 86; unofficially at 683 P.2d 26, and appears in the Appendix at 1a-7a.

JURISDICTION

The petition for writ of mandamus was granted on July 3, 984 (7a), and the writ entered on July 30, 1984 (9a), within ninety days prior to filing of this application for a writ of certiorari.

Jurisdiction is conferred on this Court by 28 U.S.C. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

At issue in this case are the Due Process Clause of the Fourteenth Amendment to the United States Constitution (the "Due Process Clause") and Section 14.065(2) of the Nevada Revised Statutes ("NRS"), Nevada's "long-arm" statute.

The Due Process Clause provides, in pertinent part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .

The Nevada statute provides, in pertinent part:

> Any person who, in person or through an agent or instrumentality, does any of the acts enumerated in this subsection thereby submits himself . . . to the jurisdiction of the courts of this state as to any cause of action which arises from:
>
> (a) Transacting any business . . . within this state.

STATEMENT OF THE CASE

Petitioner AHSA is a New York not-for-profit membership corporation organized in 1917.[2] It is incorporated under the New York Not-for-Profit Corporation Law. In 1981, it had 26 employees nearly all of whom worked at its office in New York City. The remainder worked at a small office in Ohio.

The respondents Neil G. Galatz, an attorney, and Elaine Galatz ("the Galatzes") are members of the AHSA whose Morgan horse was disqualified at a 1981 horse show in California, which horse show was not owned, operated or managed by the AHSA, because its hoof was one-eighth inch too long.

The AHSA promotes horse show competition by, among other things, recognizing horse shows, conducted by other persons, which agree to operate in accordance with the AHSA's Constitution and its rules (the "Rules").[3] The AHSA does not sponsor, operate or control horse shows in any state, including Nevada.

The membership of the AHSA includes recognized horse shows, as well as individual horsemen and horsewomen, including the Galatzes.

Pursuant to the Rules, the conduct, supervision, management, and control of AHSA-recognized horse shows rests entirely with the show management of each individual show, not with the AHSA (52a). Horse shows recognized by the AHSA govern themselves in all respects.

The AHSA owns no property, has no office or telephone in the State of Nevada, has not sold any products, provided any services for profit, nor conducted any business in the State of Nevada.

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2 The description set forth herein of the AHSA is a summary of the AHSA's Affidavit In Support of Motion To Quash Service of Summons and Complaint which appears at 32a-35a.

3 Rule X, Part VI of the Rules provides that their construction or application is governed by the laws of the State of New York.

In 1981, the plaintiffs travelled to Santa Rosa, California to enter their Morgan horse, "Jade's Hot Shot," in the Morgan Classic Royale Horse Show (hereinafter the "California Show").[4] The California Show was recognized by the AHSA, but not owned and operated by the AHSA.

At the California Show, a Steward hired and paid by the California Show disqualified the horse, "Jade's Hot Shot", because the horse's hoof length was found by him to be excessive, and thus in violation of Rule XXV, Part I, Sec. 3 of the Rules.[5]

Rule III, Part I, Sec. 2(d)(2) of the Rules then in effect set forth the requirements for measurement. That Rule provided with respect to questioning the length of an entry's toe or height of heel:

> "Should the length of toe or height of heel be questioned by a show official or protested by an exhibitor, it shall be the duty of the show committee to have the official veterinarian and a Judge or Steward officiating in the show determine whether or not the limits are exceeded" (53a).

A horse owner who wished to protest a measurement determination might do so under the Rules only to the Show Committee, a body independent of the AHSA consisting of persons who are present at, connected with, and responsible for the operation of the horse show. The remeasurement was required to take place immediately, and the decision of the show officials was *not* reviewable by the AHSA (54a). Thus,

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4 The facts with respect to the California Show and the events which led to the commencement of the action below are set forth in the complaint and the exhibits thereto which appear at 14a-30a.

5 Rule XXV, Part I, Sec. 3 of the Rules requires measurement at an All Morgan Show (of which the California Show was one) of one foot of each champion immediately upon leaving the ring. The rule prescribes the acceptable length of toe for each class of Morgan.

Rule X, Part II of the Rules provided, in pertinent part, as follows:

> "A protest with respect to the height of a horse or the length of a horse's foot may only be made to the Committee of the show. Remeasurement shall take place immediately, to the end that there be no change in height by reshoeing. *The decision of show officials shall not be reviewable by this Association*" (emphasis supplied) (54a).

The Galatzes availed themselves of this procedure and protested to the Show Committee of the California Show. Pursuant to Rule III, Part I, Sec. 2(d)(2), the hoof was remeasured by the Steward in the presence of the official show veterinarian. Upon such remeasurement, the original determination that the horse's toe was of excessive length was confirmed.

Following the remeasurement, the Galatzes brought the horse to the blacksmith who performed work on the shoe of the hoof involved. The Galatzes then demanded *another* remeasurement by the Show Committee of the California Show, which was refused by the Show Committee. By the Rules, this was the end of the matter.

However, upon his return from California to Nevada, Mr. Galatz, an attorney, apparently ruminated on the events which had occurred out of state, and mailed a written "protest" to the AHSA office in New York, as well as to the secretary of the California Show (22a-24a). This written "protest" to the AHSA was not sanctioned by the Rules, because measurement decisions are not appealable to the AHSA (54a).

Nevertheless, the AHSA's Hearing Committee, although not required to do so under the Rules, met in New York City and considered the protest for the limited purpose of determining whether the procedures called for in the measurement rule had been followed at the California Show. A copy of the decision of the AHSA Hearing Committee appears at 29a-31a.

The Hearing Committee found, in interpreting the Rules, that the officials required to be present at the California Show

performed a remeasurement upon request, that they were the "court of last resort" (30a), and that any differences of opinion as to the accuracy of the measurement instruments or the propriety of the manner of measurement should have been addressed to them at the time. The Hearing Committee noted:

> "The Rule clearly acknowledges that the circumstances of the measurement made by [the Show officials] cannot be accurately reproduced before the Hearing Committee after the fact" (30a).

The Hearing Committee concluded that the California Show Committee was entirely within its rights in refusing to measure the horse's hoof because the Rules call for only one remeasurement, and the blacksmith had performed work on the horse's hoof following the first remeasurement (30a-31a).

Two months after receiving notice by mail from the AHSA of the decision of the Hearing Committee, the Galatzes, represented by Mr. Galatz's Las Vegas law firm, sued the AHSA in the Eighth Judicial District Court of the State of Nevada (21a).

Neither the California Show, nor its Show Committee, nor its officials, were named in the suit (14a).

The complaint herein does not allege a single fact arising out of an act done or a transaction consummated in Nevada (14a-21a). The Galatzes allege that the AHSA violated its Constitution and Rules by failing to provide them with a hearing to review the measurement of "Jade's Hot Shot" at the California Show, improperly considered or failed to consider evidence at the meeting of the Hearing Committee held in New York City, and failed to enforce Rules II, III and X properly at the California Show or at the Hearing Committee meeting held in New York City.

The Galatzes also alleged that they suffered "humiliation and embarrassment" arising out of the California Steward's conclusion that the horse's hoof was too long, and the recall by

the Show Committee of the California Show of the first place ribbon and medallion.

In effect, the Galatzes challenge the events which occurred either in California, where employees of the California Show[6] came into conflict with the Galatzes, or in New York, where the AHSA's Hearing Committee examined the events and found that the requirements of its Rules had been satisfied.

The sole connection between this action and the State of Nevada is that Nevada is the home state of Attorney Galatz and his spouse.

The Proceedings Below

This action was instituted by the filing of a civil complaint against the AHSA in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, alleging that damages were in an amount less than $10,000 (20a).

The AHSA then moved, pursuant to 12(b)(2) of the Nevada Rules of Civil Procedure, to quash service of the summons and complaint, on the grounds that the AHSA was not "doing business" on a continuous basis in Nevada, and that the cause of action alleged against it did not arise out of any transaction of business within the State. The motion raised the federal questions to be reviewed by this Court.

The Eighth Judicial District Court granted the motion in an oral decision on January 26, 1982 (12a-13a) and in an order dated February 1, 1982 (10a-11a).

Immediately thereafter, the Galatzes, again represented by Mr. Galatz's law firm, filed a nearly identical complaint

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6 The AHSA approves certain of its members meeting the requisite qualifications to serve as stewards; however, stewards are employed and are paid entirely by individual horse shows, not by the AHSA. Neither the California Steward nor the California Show Committee have any connection to the AHSA except that they were, like plaintiffs, also members of the AHSA.

against the AHSA in the United States District Court for the District of Nevada, revising their damage claim upward to allege an amount in controversy in excess of $10,000, and alleging subject matter jurisdiction by reason of diversity of citizenship. The AHSA moved to dismiss that complaint upon the same grounds as its motion in the Nevada state court. The federal action was thereafter dismissed by the federal court for lack of prosecution, prior to any determination of the AHSA's motion (42a-43a).

During the pendency of the federal action, the Galatzes petitioned the Supreme Court of the State of Nevada for a writ of mandamus directing the Eighth Judicial District Court to accept jurisdiction over the AHSA in this case, on the asserted ground that the AHSA allegedly "does business and committed a tortious act within the state", again raising the federal questions in issue here.

The Decision of the Nevada Supreme Court

The Nevada Supreme Court granted the petition for a writ of mandamus but not on the grounds requested by the Galatzes (1a-7a).

The Nevada Supreme Court found that the AHSA was not doing business on a regular basis nor had it committed a tortious act within the State of Nevada. However, it concluded that, as a not-for-profit corporation, the AHSA transacted business within the meaning of the Nevada long-arm statute, NRS 14.065(2)(a), when it performed, within the State of Nevada, any of the functions for which it was organized (3a-4a).

Citing the AHSA's Constitution, the court concluded that many of the objectives or functions of the Association were performed in Nevada. These so-called objectives or functions included, in the court's view, the existence of members within the state, the collection of dues, the residence of approved judges and stewards in Nevada, the recognition by the AHSA

of horse shows within the state, the mailing by AHSA of membership-related materials into Nevada, as well as the apparent hiring by the AHSA of veterinarians (5a).

These facts led the court to conclude that the AHSA was "transacting business" in Nevada within the meaning of NRS 14.065(2)(a). (5a)

The court also concluded that the second requirement for long-arm jurisdiction was also met: that the Galatzes' cause of action arose from the transactions by the AHSA within the state (5a-6a).

First, the court conceded that "the [plaintiffs'] cause of action may have come to fruition in California, where their horse was disqualified, or in New York, where AHSA's Hearing Committee denied their request to a hearing . . ." (6a).

However, the court proceeded to read the complaint as seeking recovery for the AHSA's alleged breach of its Constitution and Rules pursuant to which the members of the organization are assured of fairness and of a right to appeal to the AHSA for redress as to questions of violations of the Rules (5a-6a). (The court ignored the crucial fact that the California Show decision which the Galatzes sought to appeal to the AHSA was non-appealable to the AHSA under those very Rules [54a].)

In the court's view, because the AHSA solicits members "such as the petitioners [within] Nevada [and] presumably those members join the AHSA in reliance upon its constitution and rules," and because it concluded (erroneously) that the Galatzes had been solicited to attend the California Show in Nevada by the AHSA,[7] the cause of action arose from the AHSA's activities in Nevada (5a-6a).

The court concluded that the AHSA had a "substantial enough connection with Nevada to render the exercise of *in*

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7 The record shows that the Galatzes were solicited to attend the California Show by the California Show, not by the AHSA (36a-41a).

personam jurisdiction over the Association reasonable and not offensive to 'traditional notions of fair play and substantial justice' ", citing *Certain-Teed Products* v. *Second Judicial District Court*, 87 Nev. 18, 23, 479 P.2d 781, 784 (1971), in which the court had held that the Nevada long-arm statute was intended to extend to the furthest limits permitted by the Due Process Clause.

REASONS FOR ALLOWING THE WRIT

I

THERE IS AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW AS TO WHETHER A CAUSE OF ACTION WHICH NEITHER AROSE FROM NOR WAS RELATED TO THE AHSA'S ACTIVITIES IN NEVADA IS SUFFICIENT TO GIVE RISE TO IN PERSONAM JURISDICTION OVER THE AHSA IN NEVADA

This case presents the Court with the opportunity to define the requisite nexus between a cause of action and a defendant's contacts with a forum which will give rise to *in personam* jurisdiction—the issue raised by the Court but left unanswered in *Helicopteros Nacionales De Colombia* v. *Hall*, 52 U.S.L.W. 4491 (1984).

Further, this case presents an egregious example of the application of an improper jurisdictional "fiction" precisely of the type which this Court decried in its decisions in *Shaffer* v. *Heitner*, 433 U.S. 186, 212-213 (1977) and *Rush* v. *Savchuk*, 444 U.S. 320, 328 (1980).

In the instant case, the court below conceded that none of the events or transactions of which the Galatzes complain occurred within Nevada. Nevertheless, the court improperly found that the constitutional requirement for specific jurisdiction—that the cause of action must "arise from or relate to" the defendant's transaction of business in the forum state—

was satisfied by a fictional "bootstrap": the mere fact that the AHSA has rules and that such rules were relied upon by the plaintiffs, who happen to be Nevada residents. The clear implication of the Nevada court's determination is that the "arising out of or related to" requirement can be met in *any* state, regardless of where the events constituting the alleged wrong occurred, simply upon a showing that a plaintiff is a member of the organization and resides in that state.

The decision of the Nevada Supreme Court, in eviscerating the essential "arising from or relating to" requirement, is equivalent to a finding of general jurisdiction over the AHSA, notwithstanding the fact that the Nevada court found that no such general jurisdiction exists. The court's analysis—because it, in effect, subjects the AHSA to the general jurisdiction of the Nevada courts—clashes with the view of specific jurisdiction articulated in *dicta* in *Helicopteros*.

In *Helicopteros*, this Court restated the complex test to be applied to determine when *in personam* jurisdiction may be asserted over a non-resident corporation.

Fundamental to the satisfaction of due process requirements are the presence of "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U.S. 457 (1940)).

This Court stated the due process considerations necessary to support long-arm, or "specific jurisdiction":

> "When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a relationship among the defendant, the forum, and the litigation is the essential foundation of in personam jurisdiction. *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977)."

52 U.S.L.W. at 4492 (footnote omitted).

The *Helicopteros* Court defined, as an exercise of "general jurisdiction", a state's exercise of personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum. An exercise of general jurisdiction requires sufficient contacts—that is, contacts which are both systematic and continuous—between the state and the foreign corporation. 52 U.S.L.W. at 4492-93.

The Court also defined suits "related to or arising out" of the defendant's contacts with the forum as exercises of "specific jurisdiction."

The Court did not define the relationship between the cause of action asserted and a corporation's transaction of business in a state which will, when the contacts do not give rise to general jurisdiction, support a finding of "specific jurisdiction"—the type of jurisdiction which purportedly attached in this case. This Court in *Helicopteros* also left open for future adjudication the meaning of the terms "arising out of" and "related to" as well as the precise definition of the sort of tie between a cause of action and a defendant's contacts with the forum which is necessary to a determination that either connection exists. 52 U.S.L.W. at 4492 n.10.

The Nevada court's decision, if permitted to stand, would seem to foreclose even the possibility of any rational distinction between general and specific jurisdiction, a consequence certainly not intended or foreseen by this Court when, in *Helicopteros*, it recognized that an essential distinction exists between the two forms of jurisdiction.

The Cause of Action Neither Arose Out Of Nor Related To Forum-Related Activities By The AHSA

The contacts cited by the Nevada court are insufficient to subject the AHSA to the general jurisdiction of the Nevada courts, and the Nevada court apparently agreed.

Helicopteros makes clear, however, that a foreign corporation's transaction of business in a jurisdiction is irrelevant unless it gives rise to contacts sufficient to subject the corporation to general jurisdiction *or* unless the cause of action arises out of or is related to its forum-related activities.

Here, there is no constitutionally cognizable relationship between the business allegedly "transacted" by the AHSA within Nevada and the cause of action, if one exists, pleaded by the Galatzes.

In substance, the Nevada court posited two ways in which the cause of action arose from and related to AHSA's activities in Nevada:

> (1) the solicitation of members in Nevada who "presumably . . . join the AHSA in reliance upon its constitution and rules" (6a); and
>
> (2) the Galatzes' inducement to attend the California Show through materials sent to them in Nevada by AHSA which they attended in reliance upon assurances that it was recognized by the AHSA and would be governed by the Rules (6a).

The record shows clearly that the materials sent to the Galatzes with respect to the California Show were sent to them, not by the AHSA, but by the owners and organizers of the California Show (36a-41a). If any representations were made with respect to the conduct of the California Show, they were made by parties other than the AHSA.

More importantly, the Rules specifically provided that the Galatzes were not entitled to a hearing before the AHSA, because Show measurement decisions are non-reviewable (52a; 54a). The Nevada court ignored this crucial fact. In effect, the court found that jurisdiction exists on the basis of the AHSA's alleged breach of a "promise" to its members (that "questions of the violations of [its] rules would be adjudicated" by it) (5a), when, in fact, the AHSA Rules made no such promise

with respect to the Rules governing measurement, and, indeed, clearly provided otherwise. This fact transports the Nevada court's jurisdictional finding from fiction to fantasy.[8]

Moreover, if the AHSA did breach any promise to its members, any such breach, of necessity, occurred in New York, where the Hearing Committee met and considered the Galatzes' protest, and not in Nevada.

The analysis of the Nevada court would subject the AHSA and any membership corporation to the general jurisdiction of any state in which it has members, without the necessity of any finding that such general jurisdiction exists. Surely, if all that is required to subject the AHSA to jurisdiction in a particular state is the presence of members, the AHSA would be subject to jurisdiction in every state in which it has members, whether the violation of the particular Rule occurred in that state or any other state. Such a result is clearly contrary to the Due Process Clause.

Surely the Constitution requires that a cause of action and the defendant's contact with the forum be more than merely to be "related" in the tenuous sense set forth by the Nevada court. Rather, as the Court of Appeals of the State of New York has held, there must be "some articulable nexus between the business transacted and the cause of action sued upon." *McGowan* v. *Smith*, 52 N.Y.2d 268, 272 (1981).

The terms "arising out of" and "related to" must define a precise factual relationship—a "substantial connection" as this Court stated in *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)—not the vague and general speculation indulged in by the Nevada Court.

This requirement of an articulable nexus or substantial relationship is totally absent from the analysis of the Nevada court.

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8 Indeed, the AHSA Hearing Committee did exercise limited jurisdiction to determine whether the California Show had abided by the procedural requirements of the measurement rule (29a).

What we are left with is an improper, dangerous and ill-reasoned jurisdictional "fiction" of the kind rejected by this Court in *Shaffer* v. *Heitner*, 433 U.S. 186, 212 (1977):

> "[T]raditional notions of fair play and substantial justice can be as readily offended by the perpetuation of ancient forms that are no longer justified as by adoption of new procedures that are inconsistent with the basic values of our constitutional heritage."

Jurisdiction Of The Nevada Courts Was Not Reasonably Foreseeable

This Court stated in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980), that *in personam* jurisdiction should be exercised where "the defendant's conduct and connection with the forum state . . . should [require it to] reasonably anticipate being haled into court there." Certainly, in stating that the facts here satisfy this test, the Nevada Court made a mockery of fairness—the touchstone of jurisdictional analysis since *International Shoe*.

II

THIS COURT SHOULD DECIDE THE IMPORTANT QUESTION OF FEDERAL LAW AS TO THE MANNER IN WHICH A NOT-FOR-PROFIT MEMBERSHIP CORPORATION "TRANSACTS" BUSINESS

This Court has never defined the test to be applied in determining how a not-for-profit corporation avails itself of the privilege of conducting activities within a foreign state such that it may be deemed to have "transacted" business. This case provides the opportunity to resolve the issue.

The Supreme Court of Nevada, in this case, decided that a not-for-profit corporation transacts business within the meaning of the Nevada long-arm statute, "when it performs any of the functions for which it was organized within the State of

Nevada." (4a). Thus, if the Nevada court is correct, a not-for-profit membership corporation may, in a suit brought by a member, be subject to jurisdiction in any forum in which it has members. This is tantamount to a finding that any corporation is subject to *in personam* jurisdiction in any state in which it has shareholders.

Referring to the Constitution of the AHSA which constitutes the equivalent of its corporate by-laws, the Nevada court noted the presence of members in the state, collection of dues from members and participating non-members, the mere presence of approved judges and stewards, member horse shows, the mailing of membership-related materials, and the selection for independent veterinarians to test for drugs at five Nevada horse shows. Based on these activities and contacts, the court concluded that the AHSA was "transacting business" in Nevada within the meaning of the Nevada long-arm statute (4a-6a).

This conclusion of the Nevada court is directly contrary to the requirements of the United States Constitution and should, because of its importance to membership organizations throughout the country, be reviewed by this Court.

The Due Process Clause requires that a corporation must, in order to be held subject to the jurisdiction of the courts of a particular state, have contacts with that state sufficient to meet "traditional notions of fair play and substantial justice." *International Shoe Company* v. *Washington*, 326 U.S. 310, 316 (1945). Thus, in order to be held subject to the jurisdiction of the state consistent with the requirements of the United States Constitution, the corporation must "purposefully [avail] itself of the privilege of conducting activities within the forum State." *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1957).

The defendant's forum-related activities must give the forum a legitimate interest in holding the defendant answerable on a claim related to those activities. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980); *Keeton* v. *Hustler Magazine, Inc.*, 52 U.S.L.W. 4346 (1984).

The issue posed to this Court is whether the scant contacts between the AHSA and Nevada warrant the exercise of jurisdiction. With specific reference to the AHSA, two courts in other states, evaluating the application of state long-arm statutes, have reached conclusions opposite to that reached by the Nevada Supreme Court.

In *Buchanan* v. *American Horse Shows Association, Inc.*, Civil Action No. 79-0031(C), slip op. (W. D. Va. Mar. 18, 1980) (44a), Chief Judge Turk held that the AHSA did not do or transact business in Virginia despite the fact that dues-paying members, as well as corporate officers, reside in Virginia. *See Friends of Animals, Inc.* v. *American Veterinary Hospital Association*, 310 F.Supp. 620 (S.D.N.Y. 1970).

The *Buchanan* court found that the AHSA had not sold any products, provided any services for profit, or conducted any business in any way, such as to invoke the benefits and protections of the laws of Virginia.[9] Consequently, the court dismissed the complaint of an AHSA member seeking to challenge a determination of the AHSA's Hearing Committee.[10]

In *Sinner* v. *American Horse Shows Association, Inc.*, No. 84-2-00254-0, slip op. (Superior Ct. Wash. July 12, 1984) (decided the same month as *Galatz*), the court denied a motion by an AHSA member for a preliminary injunction enjoining a disciplinary suspension by the AHSA's Hearing Committee, and dismissed the action on the ground that the contacts of the AHSA with the State of Washington were insufficient to justify

---

9 In *Buchanan*, a diversity action, the court read the Virginia long-arm statute, Va. Code Ann. Sec. 8.01-328.1 (Supp. 1980), which provides for jurisdiction arising out of transactions of business in Virginia, as constituting a grant of jurisdiction to the fullest extent permissible by due process.

10 The court also dismissed the complaint for lack of subject matter jurisdiction, stating that an Article 78 proceeding in a New York State court is the proper vehicle for reviewing an administrative action of a not-for-profit corporation such as the AHSA.

exercise of the court's jurisdiction without violating traditional notions of fair play and substantial justice. A copy of that order is contained in the Appendix at 50a.

The holdings of the *Buchanan* and *Sinner* courts are in accord with the decisions of the Fifth and Fourth Circuits construing the requirements of Section 12 of the Clayton Act, 15 U.S.C. § 22 (1976) with respect to not-for-profit corporations. The federal courts have evaluated whether a corporation transacts business within the meaning of Section 12 by weighing the same manifestations of corporate activity in the forum that are utilized in determining whether corporations transact or do business in a state pursuant to state long-arm statutes, and the "minimum contacts" requirements of *International Shoe Co.* v. *Washington, supra*. See generally, Note, *Venue in Private Antitrust Suits*, 37 N.Y.U.L. Rev. 268, 282-86 (1962).

In *Golf City, Inc.* v. *Wilson Sporting Goods Co.*, 555 F.2d 426 (5th Cir. 1977), the Fifth Circuit held that the Professional Golfers' Association of America ("PGA"), a trade association of golf professionals, was not transacting business in the Eastern District of Louisiana notwithstanding the following facts:

> —the PGA had 55 members in Louisiana as well as an undetermined number of dues-paying apprentices;
>
> —a golf magazine circulated in Louisiana carried free PGA advertising as to services performed by PGA members;
>
> —the PGA made available in Louisiana the necessary applications and forms for membership in the PGA by professional golfers and those seeking to become professional golfers;
>
> —the PGA conducted a five day "business school" within the district for members and apprentices;

—The PGA regularly acknowledged golf feats by amateurs in Louisiana by awarding them membership in its "Hole-In-One Club"; and

—The PGA Tournament Players Division Corporation, a separate legal entity, sponsored golf tournaments around the country, including Louisiania.

555 F.2d at 437.

The Fifth Circuit found the above contacts, taken both *seriatim* and together, were "too tenuous to subject PGA to suit in the Eastern District of Louisiana pursuant to Section 12 of the Clayton Act." 555 F. 2d at 438.

In *Bartholomew* v. *Virginia Chiropractors Association*, 612 F.2d 812 (4th Cir. 1979), the Fourth Circuit held that the American Chiropractors Association ("ACA"), a national association of professional chiropractors, was not transacting business in the Western District of Virginia for purposes of Section 12. In so finding, the Fourth Circuit took note of the following factors:

"ACA never qualified to do business in Virginia (only in Delaware) and its sole office was in Iowa. In Virginia, there were no offices, no officers, no agents, no property, no purchases, no seminars or workshops, and no sales save of pamphlets, journals, and other educational and public relations materials generating very little revenue. All transactions were by mail. No membership meetings were convened in Virginia; no directors or employees resided there."

612 F.2d at 816.

The Fourth Circuit rejected the further contention that because a trained group of members designated by the ACA to act as local peer review personnel resided there, the ACA transacted business within the district. *Id.*

The Nevada court's holding that the AHSA transacted business in Nevada is clearly contrary to the decisions discussed above and, under such authorities, was insufficient for a finding of jurisdiction over the AHSA consistent with the requirements of the United States Constitution.

If, as the Supreme Court of Nevada held, a not-for-profit membership corporation transacts business wherever it has dues-paying members, then such not-for-profit corporations may be subject to jurisdiction in any judicial district in which a member resides. No court has ever held that the Due Process Clause extends this far. This important and, to our knowledge, unprecedented question should be reviewed by this Court.

CONCLUSION

A writ of certiorari should issue to review the writ of the Supreme Court of Nevada.

Respectfully submitted,

IRA A. FINKELSTEIN, ESQ.
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 573-4300

Counsel of Record for Petitioner American Horse Shows Association, Inc.

MONA D. SHAPIRO
TENZER, GREENBLATT, FALLON & KAPLAN
Of Counsel

APPENDIX

APPENDIX

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Decision of the Supreme Court of Nevada

IN THE
SUPREME COURT OF THE STATE OF NEVADA

No. 14015

NEIL G. GALATZ and ELAINE GALATZ,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

Respondent.

Original petition for writ of mandamus, Eighth Judicial District Court, Clark County; Paul S. Goldman, Judge.

Writ granted.

Galatz, Earl & Biggar, Las Vegas, *for Petitioners.*

Jones, Jones, Bell, Close & Brown, and Kenneth A. Woloson, Las Vegas, *for Respondent.*

OPINION

PER CURIAM:

This original petition for a writ of mandamus challenges an order of the district court quashing service of a summons and complaint on the American Horse Shows Association (hereinafter "AHSA"), the real party in interest.

Petitioners are Nevada residents and are members of AHSA, a non-profit membership corporation with offices in New York. AHSA holds itself out as a worldwide organization for the benefit of horse enthusiasts. Its membership includes individual horsemen and horsewomen, and "recognized horse shows" that are conducted in accordance with AHSA's rules. AHSA undertakes to promote horse show competition through various means. In May of 1981, a horse show entitled the Morgan Classic Royale was held in California. The show was recognized by AHSA and was operated under AHSA's rules. Petitioners entered their Morgan Stallion in the horse show; the horse won first place in its class. The animal was subsequently disqualified, however, and the award was withdrawn due to alleged rule violations. Petitioners immediately lodged a protest and sought a hearing before the show committee. A hearing was not granted.

After returning to Nevada, the petitioners sought review of the show committee's actions by writing to AHSA's Hearing Committee in New York. The Hearing Committee subsequently met and summarily denied petitioners' request for a hearing, on the ground that the controversy involved a "non-appealable matter."

Thereafter, in September of 1981, the petitioners filed a complaint in district court against AHSA. The complaint alleged that AHSA had violated its constitution and internal rules by failing to provide petitioners with a hearing; by failing to rule upon the specific items contained in their protest; and by improperly considering certain evidence in opposition to their protest without providing them an opportunity to respond. Petitioners sought recovery of their transportation,

food and lodging expenses incurred in attending the California show, and sought a return of the first place prize. Additionally, they requested an award of damages to compensate them for the humiliation and embarrassment sustained as a result of the horse's disqualification, and for the loss to the horse's reputation as a performance and breeding stallion.

In response, AHSA moved to quash service of the summons and complaint, contending that it lacked sufficient contacts with Nevada to support the exercise of personal jurisdiction and that the petitioners' cause of action against AHSA did not arise from any of its activities within Nevada. The district court granted the motion to quash, and this petition followed.

Service of process upon AHSA was purportedly made pursuant to our long-arm statute, NRS 14.065. Under NRS 14.065(2)(a), an out-of-state defendant submits to the jurisdiction of Nevada courts as to any cause of action which arises from the transaction of business within this state.[1] This court has previously held that the broad language used in the long-arm statute discloses a legislative intention to reach the outer limits of federal constitutional due process. *See* Certain-Teed Prods. v. District Court, 87 Nev. 18, 23, 479 P.2d 781, 784-85 (1971).

In the present case, AHSA contends that it has not transacted business in Nevada because it has no office or place of business in Nevada, and has not sold any products, provided any services for profit, or conducted any business in Nevada such as to invoke the benefits and protections of our laws. We disagree. "A non-profit corporation's business is whatever functions it has been organized to perform." Steel Joist Insti-

---

1 NRS 14.065(2) provides in pertinent part:

> Any person who . . . does any of the acts enumerated in this subsection thereby submits himself . . . to the jurisdiction of the courts of this state as to any cause of action which arises from the doing of such acts:
>
> (a) Transacting any business . . . within this state:
>
> . . . .

In 1983, the Nevada Legislature amended NRS 14.065(2); the statute was not changed in any material way.

tute, Inc. v. J. H. Mann, III, Inc., 171 So. 2d 625, 627 (Fla. Dist. Ct. App. 1965). Thus, a non-profit corporation, such as AHSA, "transacts business" within the meaning of NRS 14.065(2)(a) when it performs any of the functions for which it was organized within the State of Nevada. *Id.* According to AHSA's constitution, AHSA was organized:

> (a) To serve and promote the best interests of Recognized Shows, Combined Training Events, Dressage Competitions, Driving Competitions and of the Exhibitors who participate in them.
>
> (b) To make adequate and fair rules governing competitions and to enforce them for the common benefit.
>
> (c) To license Judges, Stewards, and Technical Delegates.
>
> . . . .
>
> (e) To adjudicate questions of violation of the rules and to inflict penalties therefor in accordance with the rules.
>
> . . . .
>
> (i) To educate and inform the public by publishing a newspaper, magazine, rule book, other educational pamphlets on the various phases of equestrian sport.
>
> . . . .
>
> (k) To promote the interest of horse and pony breeding.
>
> . . . .
>
> (m) To further the art of riding and to encourage horsemastership and the welfare of horses and ponies.
>
> . . . .
>
> (o) To protect the welfare of horses insofar as the Association's finances will permit by conducting tests for narcotics and inspections for cruelty to animals.
>
> . . . .
>
> (q) Otherwise to assist in connection with the exhibition of horses insofar as the Association's facilities and finances permit.

Our review of the record indicates that many of these very objectives or functions were performed in Nevada. For example, in 1981, AHSA had 278 members in Nevada; AHSA collected $6950 in dues from those Nevada members and collected $21,424 from participating nonmembers. Further, AHSA had seven registered judges and seven certified stewards residing in Nevada, and recognized 24 horse shows held in Nevada. AHSA also mailed membership-related materials into Nevada, as well as prize lists, premium lists, the "Horseshow Magazine," AHSA's 1981 rule book, amateur cards, entry blanks, membership applications, and advertisements promoting AHSA. Finally, AHSA apparently selected and paid for veterinarians to test for drugs at five Nevada horse shows. Thus, we conclude, based on these activities and contracts, that AHSA was "transacting business" in Nevada within the meaning of NRS 14.065(2)(a).

AHSA also contends that the petitioners' cause of action against it does not arise from AHSA's activities within Nevada. *See* NRS 14.065(2)(a) and (3); Shapiro v. Pavlikowski, 98 Nev 548, 654 P.2d 1030 (1982). In particular, AHSA argues that petitioners' cause of action arose from an "alleged incident occurring outside the State of Nevada in California, at a horse show which was merely recognized by the AHSA," and that the "conduct, management and control of that independent horse show . . . rested solely with such show and not with the AHSA." The complaint filed below against AHSA, however, seeks recovery for AHSA's alleged breach of its constitution and rules by failing to provide the petitioners with the means of redress authorized by AHSA's rules. The constitution and rules promulgated by AHSA expressly assure its members of the fairness of the rules governing horse show competitions, and assure that questions of the violation of those rules will be adjudicated. Even the AHSA membership application states that members "are assured the highest degree of fairness and equality through AHSA's active committee programs . . . and [of] the right to appeal to the Association's Hearing Committee." AHSA solicits members, such as the petitioners, for its

organization in Nevada; presumably those members join the AHSA in reliance upon its constitution and rules. Thus, the cause of action does appear to arise from AHSA's activities in Nevada. Significantly, petitioners allege that they were induced to attend the California horse show through material sent to them in Nevada by AHSA. Further, they allege that they attended this horse show in reliance upon AHSA's assurances that the show was recognized by AHSA and would be governed by AHSA rules. Thus, although the cause of action may have come to fruition in California, where their horse was disqualified, or in New York, where AHSA's Hearing Committee denied their request for a hearing, we conclude that it nevertheless arises from and relates to AHSA's activities in Nevada. *See, e.g.*, Higgins v. American Society of Clinical Pathologists, 227 A.2d 712 (N.J. Super. Ct. App. Div. 1967) (personal jurisdiction over nonresident nonprofit corporation upheld), *rev'd on other grounds*, 238 A.2d 665 (1968).

Finally, based on the foregoing, we conclude that AHSA has a substantial enough connection with Nevada to render the exercise of *in personam* jurisdiction over the association reasonable and not offensive to "traditional notions of fair play and substantial justice." *See* Certain-Teed Prods. v. District Court, 87 Nev. at 23, 479 P.2d at 784. AHSA's actions of encouraging, promoting and soliciting members in Nevada, coupled with the other activities and contacts mentioned above, are such that AHSA should have reasonably anticipated that it might be subject to litigation in this state. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). The district court therefore erred in quashing service of process upon AHSA.

For the reasons set forth above, a writ of mandamus shall issue requiring the district court to accept personal jurisdiction over AHSA in the proceedings below.

/s/ MANOUKIAN, C.J.
Manoukian

/s/ SPRINGER, J.
Springer

/s/ MOWBRAY, J.
Mowbray

/s/ STEFFEN, J.
Steffen

/s/ GUNDERSON, J.
Gunderson

Attest: A full, true and Correct Copy.
Judith Fountain, Clerk of the Supreme Court.

By /s/ JUDITH FOUNTAIN Chief Deputy

Writ of Mandate of the Supreme Court of Nevada

IN THE
SUPREME COURT OF THE STATE OF NEVADA

No. 14015

NEIL G. GALATZ and ELAINE GALATZ,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

Respondent.

WRIT OF MANDATE

TO: The Honorable Paul S. Goldman, Judge of the Eighth Judicial District Court:

WHEREAS, this Court having made and filed its written decision that a writ of mandamus issue,

NOW, THEREFORE, you are commanded to accept personal jurisdiction over AHSA in the proceedings in the matter entitled Galatz v. American Horse Shows Association, Inc., No. A-207639.

WITNESS The Honorables Noel E. Manoukian, Chief Justice, Charles E. Springer, John Mowbray, Thomas L. Steffen and E.M. Gunderson, Associate Justices of the Supreme Court of the State of Nevada, and attested by my hand and seal this 24th day of July, 1984.

/s/ JUDITH FOUNTAIN
Clerk of the Supreme Court

[SEAL]

Notice of Entry of Writ of Mandate on July 30, 1984

OFFICE OF
CLERK OF THE SUPREME COURT
Capitol Complex
Carson City, Nevada 89710

July 30, 1984

To: Galatz, Earl & Biggar
Jones, Jones, Close & Brown

Re: Galatz vs. The Eighth Judicial District Court of the State of Nevada, No. 14015

You are hereby notified that I have this day received and filed the following:

Writ of Mandate. Entg. Return. Served on Judge Goldman on July 26, 1984.

JUDITH FOUNTAIN, *Clerk*

Order of the Eighth Judicial District Court of the State of Nevada, County of Clark, Granting Motion to Quash Service of Summons and Complaint

CASE NO. A 207639
DEPT. NO. X
CIVIL DOCKET "K"

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

NEIL G. GALATZ AND ELAINE GALATZ,

Plaintiffs,

vs.

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

Defendant American Horse Shows Association, Inc.'s Motion to Quash Service of Summons and Complaint having come on for hearing before the Court January 26, 1982, Plaintiffs appearing by and through their counsel Galatz, Earl & Biggar, Defendant American Horse Shows Association, Inc. appearing by its counsel Jones, Jones, Bell, Close & Brown, the Court being fully advised in the premises and good cause appearing, it is hereby

ORDERED that Defendant's Motion to Quash Service of Summons and Complaint be, and hereby is, granted.

DATED this 1st day of February, 1982.

/s/ [illegible]
District Judge

SUBMITTED BY:

JONES, JONES, BELL, CLOSE & BROWN

BY /s/ KENNETH A. WOLOSON, ESQ.
Kenneth A. Woloson, Esq.
300 South Fourth St., #700
Las Vegas, Nevada 89101
Attorneys for Defendant

FILED
Feb 2 2:12 PM '82
LORETTA BOWMAN, *Clerk*
By MARGO CROOKS

Oral Decision of the Eighth Judicial District Court of the State of Nevada, County of Clark, Granting Motion to Quash Service of Summons and Complaint

Case No. A207639

DEPARTMENT TEN

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

NEIL G. GALATZ and ELAINE GALATZ,
Plaintiffs,

—vs.—

AMERICAN HORSE SHOWS ASSOCIATION, INC.,
Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Before

THE HONORABLE PAUL S. GOLDMAN,
District Judge

Tuesday, January 26, 1982
9:00 A.M.

APPEARANCES:

For the Plaintiffs: ALLAN R. EARL, ESQ.
GALATZ, EARL & BIGGAR
710 South Fourth Street
Las Vegas, Nevada 89101

For the Defendant: KENNETH A. WOLOSON, ESQ.
JONES, JONES, BELL, CLOSE & BROWN
300 South Fourth Street
Suite 700
Las Vegas, Nevada 89101

Reported By: GERRI LAPTHORNE, C.S.R. 82
Official Court Reporter

THE COURT: A207639, Galatz versus American Horse Shows. This is being reported at the request of defendant:

* * *

THE COURT: I understand. Counsel, I know your response would be brilliant, persuasive, and dazzling to the Court, and I will take all that into consideration.

It seems to me I have tried, Mr. Earl, to squeeze this into some association for which I have some familiarity. The closest I can come to is the NCAA. That's not terribly close, but it's as close as I can come as doing business.

The contract, however, was executed by mail, I would admit, in the State of New York, and a tort, if any, or the contractual breach, if any occurred, in the State of California, and for that reason I am going to grant the motion to quash. Thank you Counsel.

ATTEST: Full, true and accurate transcript of proceedings had.

GERRI LAPTHORNE, C.S.R. 84
Official Court Reporter

Complaint with Exhibits

CASE NUMBER A207639
DEPARTMENT NUMBER X
CIVIL DOCKET K

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

NEIL G. GALATZ and ELAINE GALATZ,

Plaintiffs,

vs.

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant.

COMPLAINT

Plaintiffs complain and allege as follows:

I

That Plaintiffs, NEIL G. GALATZ and ELAINE GALATZ, are residents and citizens of the County of Clark, State of Nevada.

II

That Defendant, AMERICAN HORSE SHOWS ASSOCIATION, INC., is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of New York.

III

That AMERICAN HORSE SHOWS ASSOCIATION, INC. now does and has, at all times mentioned in this Complaint, done business in Clark County, Nevada.

IV

NEIL G. GALATZ and ELAINE GALATZ, Plaintiffs above-named, are the owners of a Morgan Stallion named Jade's Hot Shot, bearing American Morgan Horse Registration #26187.

V

That the Defendant, AMERICAN HORSE SHOWS ASSOCIATION, INC. is an organization which has undertaken to serve to regulate recognized horse shows and to make adequate and fair rules governing the conduct of such horse shows and to regulate and license judges and stewards.

VI

That pursuant to the aforesaid undertaking, AMERICAN HORSE SHOWS ASSOCIATION, INC. formulated rules, which were in effect in 1981 governing the aforementioned subjects.

VII

That the AMERICAN HORSE SHOWS ASSOCIATION, INC. provides for membership in its organization; that the Plaintiffs herein, NEIL G. GALATZ and ELAINE GALATZ, are members of the AMERICAN HORSE SHOWS ASSOCIATION, INC. That the membership card numbers for NEIL G. GALATZ and ELAINE GALATZ, respectively, are 057019 and 020930.

VIII

That on May 8, 9, and 10, 1981, a show called the Morgan Classic Royale was held in Santa Rosa, California, and was recognized and operated in accordance with and under the rules of the AMERICAN HORSE SHOWS ASSOCIATION, INC.

That the Morgan Classic Royale Show was held out as a recognized AMERICAN HORSE SHOWS ASSOCIATION, INC. "A" rated Morgan Show.

IX

That the Plaintiffs participated in the Morgan Classic Royale Horse Show and entered Jade's Hot Shot in the Amateur Park Harness Class. That Jade's Hot Shot won the class and subsequently was stated to be disqualified because the horse's hoof was alleged to be 1/8 of an inch too long according to the steward of the show, Art Betts.

X

That at the time of the alleged measurement and disqualification, a protest was made by NEIL G. GALATZ and ELAINE GALATZ to the Morgan Classic Royale Show, which protest was ignored and never brought on to hearing. That the protest which was lodged at that time is set forth in Exhibit A attached hereto and made a part hereof by reference as though fully set forth herein.

XI

That subsequent to the refusal of the Morgan Classic Royale Show Committee to act, NEIL G. GALATZ and ELAINE GALATZ entered a protest to the AMERICAN HORSE SHOWS ASSOCIATION, INC. by virtue of a letter, a copy of which is attached hereto as Exhibit B and incorporated herein by reference as though fully set forth.

XII

That on June 16, 1981, additional material consisting of a photograph was supplied to the AMERICAN HORSE SHOWS ASSOCIATION, INC. as set forth in Exhibit C attached hereto and made a part hereof by reference as though fully set forth herein.

XIII

That on July 14, 1981, Plaintiffs were informed by a letter dated July 10, 1981, that a meeting of the Hearing Committee of the AMERICAN HORSE SHOWS ASSOCIATION, INC. had been held on June 10, 1981, at which time it was decided that the protest presented a non-appealable matter which could not be scheduled for a hearing. A copy of the letter advising Plaintiffs of this is attached hereto as Exhibit D and made a part hereof by reference as though fully set forth herein.

XIV

The Constitution and Rules of the AMERICAN HORSE SHOWS ASSOCIATION, INC. provide for the governing of the conduct of members at recognized horse shows, and the handling of disputes concerning horse show problems. That the Constitution and Rules are intended to benefit the members of the AMERICAN HORSE SHOWS ASSOCIATION, INC., including Plaintiffs herein.

XV

That the AMERICAN HORSE SHOWS ASSOCIATION, INC. has violated its Constitution and Rules in the following particulars:

1) Defendant failed to provide a hearing for Plaintiffs against the Morgan Classic Royale Horse Show and steward, Art Betts, pursuant to Rule X, Part III, Section 6;

2) By failing to send the protest of Plaintiffs to the Judges and Stewards Committee and to investigate and hold a hearing pursuant to the provisions of Rule VIII, Part I, Section 6;

3) The AMERICAN HORSE SHOWS ASSOCIATION, INC., without providing a hearing, apparently considered evidence submitted in opposition to the protest as reflected in the finding and decision of the Hearing Committee attached hereto as Exhibit D and incorporated by reference as though fully set forth herein, such evidence being the report of the steward, Art Betts, and a statement of the show's secretary, said evidence

being presented without an opportunity for examination of it by Plaintiffs and without any opportunity for cross examination, rebuttal or response to said evidence. That, while denying a hearing, the accepting of these items as evidence would indicate that a hearing was held in absentia and in violation of Rule X, Section 6(a) and (b);

4) Further, the Hearing Committee failed to consider the photograph which was mailed on June 16, 1981, to them, as reflected in Exhibit C attached hereto and made a part hereof by reference as though fully set forth herein, in violation of Rule X, Section 6(a) and (b);

5) The Defendant is further incorrect in its findings to the effect that a proper remeasurement was granted. Rule III, Part I, Section 2(d) (2) provides that the remeasurement shall be conducted at the request of the Show Committee after the protest has been lodged by the exhibitor. The Show Committee refused to accept a protest and refused to have a remeasurement.

6) The AMERICAN HORSE SHOWS ASSOCIATION HEARING COMMITTEE further violated the rules in that it did not undertake to examine, provide a hearing upon or rule upon the bulk of the items set forth in the protest of the Plaintiffs, to-wit, the hearing did not purport to rule upon or consider:

a) The allegations that the Show Committee met twice ex parte without providing Plaintiffs an opportunity to be present and present their point of view or evidence in violation of Rule X.

b) Defendant failed to rule on the question of the premium list being inadequate and improper in that it failed to set forth that the Amateur Park Harness Class did not qualify for showing and exhibition in the Championship Park Harness Class in violation of Rule IV.

c) Further, Defendant failed to rule on the requirement that the ruler used to measure Jade's Hot Shot's hoof be verified as accurate in violation of Rule III.

d) Defendant failed to consider and rule upon the rule requirement that the surface upon which the horse's hoof is measured be flat and clean in violation of Rule III.

e) Defendant failed to consider and rule upon the problem of the protruding pad and nails on Jade's Hot Shot's hoof and the right to have the pad flushed and the nails reset pursuant to Rule III and the customs and practices followed in such situations.

f) Defendant did not consider or rule upon the propriety and need that the hoof be cleaned before measurement in violation of Rule III and the customs and practices followed in such situations.

g) Defendant improperly determined that there was a re-measurement, when, in fact, there was not a remeasurement as required by Rules II, III and X.

h) Defendant failed to rule upon the fact that the Morgan Classic Royale Show perpetrated and committed Rule violations and made no efforts to prevent or correct the Rule violations in violation of the Show's obligation pursuant to Rule II, Section 2(a).

i) Defendant failed to consider and rule upon the allegation that a shoe was thrown from a horse during a class and was not weighed as required by Rule III, Section 9 and Rule XXV.

XVi

That as a direct and proximate result of the aforesaid violation, the Plaintiffs have sustained damages as follows:

1. The cost of transporting Jade's Hot Shot from Upland, Califronia, to Santa Rosa, and back;

2. The cost of maintenance of the horse at the show grounds;

3. The cost of transportation, food and lodgings for Neil G. Galatz to attend the show;

4. The cost of the entry fees and other fees paid for Jade's Hot Shot;

5. Loss of and return of the first place medallion and ribbon;

6. Damage to the reputation of Jade's Hot Shot as a performance and breeding stallion;

7. Humiliation and embarrassment sustained by Plaintiffs as a result of the allegations that the horse's hoof was over length when in fact it was not, and the public humiliation suffered by Plaintiffs in having a first place ribbon and medallion recalled;

8. That Plaintiffs' damages are in excess of the sum of $3,000.00, but less than the sum of $10,000.00.

XVII

That Plaintiffs have secured the services of an attorney in order to prosecute this action, and Plaintiffs are entitled to reasonable attorney's fees.

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

1. For damages in excess of the sum of $3,000.00; but not in excess of the sum of $10,000.00;

2. For Plaintiffs' attorneys fees and costs herein;

3. That Defendant be required to impose sanctions against the Morgan Classic Royale Show and the steward, Art Betts;

4. That Defendant be ordered to require the return of the First Place Ribbon and Medallion to Plaintiffs;

5. For such other and further relief as to the Court may deem just and proper in the circumstances.

GALATZ, EARL & BIGGAR

By /s/ ALLAN R. EARL

Allan R. Earl
710 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

FILED
Sep 4 4:00 PM '81
LORETTA BOWMAN, *Clerk*
By NORETTA CALDWELL

Exhibit A to Complaint, "Protest" by Neil G. Galatz

Protest To:

1. Sharan Reed, Secretary
   Morgan Classic Royale
   2544 Ludwig Avenue
   Santa Rosa, California 95401
2. American Horse Shows Association Hearing Committee
3. The American Horse Shows Association Judges & Stewards Committee

Neil G. Galatz of 710 South Fourth Street, Las Vegas, Nevada 89101 (702) 306-0600 protests the alleged measurement of and disqualification of Jade's Hot Shot in Class #24, Park Harness Amateur at the Morgan Classic Royale on 5/8/81. Protestant further protests against the Morgan Classic Royale Show, the Morgan Classic Royale Show Committee and Art Betts, Steward of the Morgan Classic Royale Show upon the grounds and for the reasons set forth hereafter.

The "accused" against whom this protest is lodged are:

1. Morgan Classic Royale Show whose address is 2544 Ludwig Avenue, Santa Rosa, California 95401 and Sonoma County Fairgrounds, Santa Rosa, California
2. Morgan Classic Royale Show Committee and the members thereof:

Margot Barron	Sharan Reed
Hank & Louise Boyd	Stuart & Joyce Sobelman
Bill Buchmann	Jim & Laura Smith
Evelyne Costa	Pat Swift
Mimi Graves	Delores Tonelli
Harv & Sydney Holly	Adrienne Wailes
Bud & Ann Needham	

whose address is:

2544 Ludwig Avenue, Santa Rosa, California 95401
and
Sonoma County Fairgrounds, Santa Rosa, California

3. Art Betts, Morgan Classic Royale Steward whose address is Sonoma County Fairgrounds and 10493 Mill [illegible] Rd., Sebastopool, Calif. 95472

Protestant alleges that:

I. Jade's Hot Shot was not measured properly by the Steward, Art Betts because

   a. The surface on which he was measured was not smooth and flat in that it was pitted, contained dirt and gravel and was not flat or level

   b. The pad on the hoof was jutting out, preventing the ruler from being placed properly

   c. Several nails in the front (toe) part of the hoof were not flush to the shoe

   d. The hoof was not picked clean before measurement

All in violation of Rule III

II. Requests for a prompt remeasurement to the accused were denied or ignored in violation of Rules II, XII & X

III. The measurement device (wooden ruler) was not checked for accuracy

IV. The accused failed to follow or enforce the Rules of the A.H.S.A. by perpetrating and permitting the violations set forth in I, II, & III above to occur and further in failing to enforce standards, Procedures and the rules regarding proper methods of measuring the hooves of horses throughout the show.

All in violation of the Rules previously cited & also in violation of Rule II

V. The accused further violated the Rules of The A.H.S.A. by meeting in camera without the presence of the protestant to review and decide the claims made herein, all in violation of Rules II & X

VI. The accused further violated the rules of the A.H.S.A. in failing to weigh a shoe thrown from horse during a class on 5/8/81 in violation of the rules previously cited and also rules III & XXV

VII. Request is hereby made for proper measurement immediately so that he may keep his First place ribbon and Medallion and compete further in the Morgan Classic Royale.

VIII. No reshoeing of Jade's Hot Show [sic] has been done, only the projecting pad and nails have been rasped flush respectively to the hoof and show [sic]. The Horse has NOT been reshod.

XX. That Art Betts, Steward, did at or about the time the Morgan Classic Royale Show commenced state to the effect that he was going to measure at least 70 or 80 horses hooves and make every exhibitor scurry to reset his horse.

/s/ NEIL G. GALATZ
Neil G. Galatz

Receipt of the original of this protest and the sum of $50.00 is acknowledged this 9th day of May, 1982

/s/ SHARON REED
Sharon Reed
5-9-81

Exhibit B to Complaint, Letter dated May 12, 1981 from Neil G. Galatz to James Fallon, American Horse Shows Association, Inc.

May 12, 1981

Mr. James Fallon
American Horse Show [sic] Association
598 Madison Avenue
New York, NY 10022

Dear Mr. Fallon:

Enclosed are copies of a protest I wish to lodge arising out of the Morgan Horse Classic Royale Show. The statements as to the basis of the protest are set forth in the enclosed protest, and are further amended by including the additional items covered in the statement of Elaine Galatz, and are further amended to include the failure of the Show Secretary to forward to the Hearing Committee of the American Horse Show Association the protest lodged at the Show.

Included, in addition to the protests, are statements in support of the protest from Elaine Galatz, Idabelle Jones, Roy and Janie Coats, John S. Bee, Garn Walker, Harold Angell, Kenneth Guller, Rock Walker, Andrew Marticello, Wayne Day, H. Wright and Elisabeth Goth. Each statement includes a copy of the handwritten statement and also a typed transcription thereof for your ease and convenience in reading.

In addition, I am enclosing a partial list of the premium list and program. I am sending two copies of everything, since the protest is directed to the hearing committee and to the Judges and Stewards Committee.

I would appreciate hearing from you promptly.

Very truly yours,

Neil G. Galatz

NGG:fb
Enc.

Exhibit C to Complaint, Letter dated June 16, 1981 from Neil G. Galatz to Claudia Bode, American Horse Shows Association, Inc. [Photograph Omitted]

June 16, 1981

Ms. Claudia Bode
Secretary to Hearing Committee
American Horse Shows Association, Inc.
598 Madison Avenue
New York, NY 10022

Re: *Protest: Neil G. Galatz v. "JADE'S HOT SHOT"*

Dear Ms. Bode:

To supplement the materials previously sent to you regarding the above matter, we have enclosed a copy of the photograph of the board which is referred to in the witness statements.

Very truly yours,

Neil G. Galatz

NGG:fb
Enc.

Exhibit D to Complaint, Letter dated July 10, 1981 from American Horse Shows Association, Inc. to Neil G. Galatz, Enclosing Findings and Decision of Hearing Committee

American Horse Shows Association, Inc.
THE NATIONAL EQUESTRIAN FEDERATION
OF THE UNITED STATES
598 MADISON AVENUE, NEW YORK, N.Y. 10022 (212) Plaza 9-3070
Cable AMHORSE

July 10, 1981

Neil G. Galatz, Esq.
Galata, Earl & Biggar
710 South Fourth Street
Las Vegas, Nevada 89101

Dear Mr. Galatz:

At a meeting of the Hearing Committee of the American Horse Shows Association, held on June 10, 1981 in New York City, the Committee gave consideration to your protest against the 1981 Morgan Classic Royale Horse Show, Show Committee and Show Steward concerning the measurement and disqualification of "JADE'S HOT SHOT" in Class 24 (Park Harness Amateur) at said show. After considering all of the evidence presented in the case, the Committee members present at this meeting were unanimously of the opinion inasmuch as the requirements of Rule III, Part I, Sec. 2(d)(2) were met, the decision made by the show officials that "JADE'S HOT SHOT'S" toe exceeded the permissible length is not protestable.

By unanimous vote of the members of the Hearing Committee present at this meeting, it was determined that the protest presented a non-protestable matter which should not be scheduled for a hearing.

A copy of the written findings and decision of the Hearing Committee is enclosed for your information.

Very truly yours,

/s/ CLAUDIA BODE

Claudia M. Bode
Secretary to Hearing Committee

CB:hs
Enc.

FINDINGS & DECISIONS OF HEARING COMMITTEE

Re: Protest: Neil Galatz v. 1981 Morgan Classic Royale Horse Show—Show Committee and Show Steward

The following comprise the findings and decision of the Hearing Committee of the American Horse Shows Association following a meeting held at the Westbury Hotel on June 10, 1981 in the matter of the protest, Neil Galatz v. 1981 Morgan Classic Royale Horse Show, Show Committee and Show Steward. The protest concerns the measurement of and disqualification of "JADE'S HOT SHOT" in Class 24 (Park Harness Amateur) at said show.

PRESENT: Albert E. Hart, Jr., in the chair; William P. Harsh; Mrs. John J. McDonald; Mrs. W.T. Meredith.

ALSO PRESENT: William A. Roos, IV, Esq., Counsel to Hearing Committee; Claudia M. Bode, Secretary to Hearing Committee

The Committee gave consideration to the report of the Steward, Arthur E. Betts, regarding the show held May 8-10, 1981 regarding the measurement of the toe of the pony "JADE'S HOT SHOT" at the show, the protest filed by Mr. Galatz at the show regarding the incident, and the statement filed in support of the protest with the Hearing Committee by Elaine Galatz, sworn to May 12, 1981, and supporting statements listed in Mr. Galatz' letter dated May 12, 1981. The Committee also gave consideration to the show program and extracts from its prize list, as well as a statement from the secretary of the show committee to the effect that the show committee considered the measurement in question to amount to a non-protestable decision under the rules.

From the foregoing, it was the unanimous opinion of the members present at the meeting that inasmuch as from the protest itself it is clear that the requirements of Rule III, Part I, Sec. 2(d)(2) were met, the decision made by the show officials that "JADE'S HOT SHOT'S" toe exceeded the permissible length is non-protestable. The rules are clear that a

show official has the right to question the length of an entry's toe, and specifies that measurement shall be made by the official veterinarian and a judge or steward officiating at the show. Sec. 2(a) of Rule III provides instructions as to how the measurement shall be made. Rule X, Part II provides that "A protest with respect to. . .the length of a horse's foot may only be made to the Committee of the show. Remeasurement shall take place immediately, to the end that there shall be no change in height by reshoeing. The decision of show officials shall not be reviewable by this Association."

From the statements submitted in support of the protest, it was clear that the steward selected the horse's hoof for measurement and declared the toe of excess length. The protestor asked for re-measurement under the rule at which point the show's veterinarian was immediately called over, and he with the steward re-measured the hoof. Had the rules with respect to this re-measurement not been followed (for example, if the re-measurement had not been by the official veterinarian and at least one other officiating judge or the steward), the matter might properly stand before the Hearing Committee. However, since the officials required to be present did perform a re-measurement upon request, they were the court of last resort in the opinion of the members of the Hearing Committee, and any differences of opinion as to the accuracy of the measuring instruments or the propriety of the manner of measurement should have been addressed to them at the time. The rule clearly acknowledges that the circumstances of the measurement made by them cannot be accurately reproduced before the Hearing Committee after the fact.

Although the protestor sought to have the show committee make subsequent remeasurements at the show, the Hearing Committee felt that the show committee was entirely within its rights in refusing to do so because only one remeasurement is called for by the rules, and moreover by the protestor's own admission the farrier had performed work on the horse's shoe following the first remeasurement. For the foregoing reasons, the members of the Hearing Committee present at the meeting

unanimously voted that the protest be determined to present a non-protestable matter which should not be scheduled for a hearing.

/s/ CLAUDIA BODE

Claudia M. Bode
Secretary to Hearing Committee

Affidavit of James J. Fallon In Support of Motion To Quash Service of Summons and Complaint

CASE NO. A 207639
DEPT. NO. X
CIVIL DOCKET "K"

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

NEIL G. GALATZ and ELAINE GALATZ,

Plaintiffs,

vs.

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF JAMES J. FALLON IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

1. I, JAMES J. FALLON, am the Executive Vice-President of The American Horse Shows Association, Inc. ("AHSA"). I make this affidavit from my personal knowledge and from the records of the AHSA. If called as a witness, I could and would competently testify as to the facts set forth below.

2. The AHSA was established in 1917 and is a New York not-for-profit membership corporation. Included among its

members are recognized horse shows, which conduct themselves in accordance with the AHSA's rules but which are independently sponsored, operated and controlled, and individual horsemen and horsewomen, such as the plaintiffs herein.

3. The AHSA serves to promote horse show competition through various means, and the objects of the AHSA, as set forth in its constitution, include the following:

> To serve and promote the best interests of Recognized Shows, Combined Training Events, Dressage Competitions, Driving Competitions and of the Exhibitors who participate in them.
>
> To make adequate and fair rules governing competitions and to enforce them for the common benefit and to adjust disputes.
>
> To educate and inform the public.
>
> To promote the interest of horse and pony breeding.
>
> To further the art of riding and to encourage horsemastership and the welfare of horses and ponies.
>
> To create and maintain public interest in, and otherwise to implement the equestrian events of the Olympic and Pan American Games and other international equestrian competitions.
>
> The entire text of the AHSA Constitution as well as its Rules is attached hereto as Exhibit #1 of this affidavit.

4. There are over 37,000 individual members of the AHSA. Well under 1%, only 278, are in Nevada.

5. There are 1,600 show members. Of these members, only 24 are located in Nevada.

6. There are approximately 135 affiliated association memberships. Only 1, the Nevada State Horsemen's Association is located in Nevada. Such affiliated association members are completely independent organizations over which the AHSA asserts no control whatsoever; the purpose of their membership in the AHSA is solely to acquaint horse show participants

with the function and rules of the AHSA. See Exhibit 1, pp. 21-22.

7. Of the individual and show members, only a *de minimis* percentage of its total revenues is collected by the AHSA from Nevada residents. Of those members, there are many instances in which Nevada residents use their memberships for the purposes of entering their horses in horse shows in other states, as was the case with the plaintiffs herein.

8. There are approximately 1,800 persons who have been approved by the AHSA as qualified to hold themselves out for hire to private horse shows to act as judges, stewards and other officials. Only nine of these individuals reside in Nevada. As officials, they do not conduct, supervise, manage or control the shows which retain them. Pursuant to Rule II, Part I, Section 1 of the AHSA's Rules, the conduct, supervisions, management and control of horse shows rests with the show management of each of the individual shows and not with the AHSA. Thus, for example, the rules regarding the duties at a recognized show of a steward licensed by the AHSA provide that: "A steward should clearly understand that he has no authority in connection with the management or the judging of a show."

9. For performing duties at shows which retain them, approved judges and other officials are compensated directly by the individual shows and are not paid for their services by the AHSA. While the AHSA holds clinics for such officials, no clinics are held in Nevada.

10. The only office of the AHSA is located in New York City, with the exception of a small office in Ohio. It employs a total of approximately 26 employees, none of whom resides or works or performs any duties in Nevada. The AHSA maintains no offices, bank accounts or corporate records in Nevada, nor has it ever qualified to do business in Nevada.

11. The AHSA does not own, use, possess or hold any property in Nevada. It has no mailing address or post office

box in Nevada, nor is it listed in any Nevada telephone directory or yellow pages. It sells no products and performs no services within the State, and neither conducts, supervises, controls, nor manages any horse shows within the State.

12. The official publication of the AHSA, HORSE SHOW magazine, is published monthly in New York and mailed to all members of the AHSA. Membership dues include an annual fee of $1.00 for the magazine.

13. The AHSA has committed no acts, improper or otherwise, in whole or in part within the State of Nevada. The complaint herein does not in fact make any allegations to the contrary, and only sets forth allegations with respect to events occuring either at a horse show in California or before the AHSA Hearing Committee in New York.

/s/ JAMES J. FALLON
James J. Fallon

SUBSCRIBED and SWORN to before me
this 28th day of October, 1981.

/s/ WILLIAM A. ROOS IV
NOTARY PUBLIC in and for said
County and State.

WILLIAM A. ROOS IV
Notary Public, State of New York
No. 248636125
Qualified in Kings Co. Certified in N.Y. Co.
Commission expires March 30, 1982

Exhibit "K" to Memorandum of Neil S. Galatz and Elaine Galatz in Opposition to Motion to Dismiss

THE
MORGAN CLASSIC ROYALE

Is Operated In Accordance With The Current Rules Of
THE AMERICAN HORSE SHOWS ASSOCIATION
Of which Body it is a Regular Member

Rated 'A' In Morgan Division

Every person who participates in the show is responsible for a knowledge of and is subject to the Association Rules. Spectators will better enjoy the show by knowing them. Members receive a copy of the current Rule Book and "Horse Show" and are entitled to participate in the Annual Horse of the Year Award competitions.

Life, Contributing, Senior, Junior and Affiliated Members shall be eligible to participate in all classes at a regular members show and recognized dressage competition. A non-member may participate as an owner, lessee, agent, trainer or junior owner (non-rider) in any "A," "B," "C" rated classes; in any preliminary, intermediate, or open jumper classes at regular member shows; or in any dressage classes at first level and above at a regular member show or a dressage competition upon payment of a $4.00 registration fee.

The American Horse Shows Association, Inc.
598 Madison Avenue, New York, NY 10022
Telephone: (212) 759-3070

Enclosed is my payment of $_____ for membership in the AHSA. (Membership expires November 30).

Life .....$450.00 Senior.....$25.00
Contributing..$50.00 (Minimum) Junior (under 18 years)....$15.00

Juniors give date and year of birth _____

Name _____
FIRST MIDDLE INITIAL LAST

Address _____
NO. AND STREET

_____
CITY STATE ZIP CODE

Telephone _____

REDWOOD MORGAN HORSE CLUB

MEMBERSHIP APPLICATION

I am an admirer of Morgan Horses and am interested in joining the REDWOOD MORGAN HORSE CLUB

Would you please send an application to:

Name .....

Address .....

(Send completed form to RMHC, c/o Connie Berto, 70 Crane Dr. San [illegible])

ATTENTION: OWNERS, LESSEES, AGENTS, TRAINERS AND JUNIOR OWNERS

LIFE, CONTRIBUTING, SENIOR, JUNIOR AND AFFILIATED MEMBERS SHALL BE ELIGIBLE TO PARTICIPATE IN ALL CLASSES AT A REGULAR MEMBER SHOW AND RECOGNIZED DRESSAGE COMPETITION. A NON-MEMBER MAY PARTICIPATE AS AN OWNER, LESSEE, AGENT, TRAINER OR JUNIOR OWNER (NON-RIDER) IN ANY "A", "B", "C" RATED CLASSES: IN ANY PRELIMINARY, INTERMEDIATE, OR OPEN JUMPER CLASSES AT REGULAR MEMBER SHOWS; OR IN ANY DRESSAGE CLASSES AT FIRST LEVEL AND ABOVE AT A REGULAR MEMBER SHOW OR A DRESSAGE COMPETITION UPON PAYMENT OF A $4.00 REGISTRATION FEE.

THE MORGAN CLASSIC ROYALE

is operated in accordance with the current rules of
The American Horse Shows Association, Inc.
of which body it is a

REGULAR MEMBER ** RATED "A" MORGAN

(Give classification of membership. Rule I, Part I) and is Rated (Give the rating for each Division and Section.) Individual Show—
Fill In:

AHSA MEMBERSHIP

MEMBERS are eligible to compete as owners, lessees, agents, trainers and junior owners (non-riders) in all classes at AHSA Regular Member Shows and Recognized Dressage Competitions without being subject to a per-show registration fee which non-members must pay

MEMBERS are assured the highest degree of fairness and equality through AHSA's active committee programs, the drugs and medications testing program, and the right to appeal to the Association's Hearing Committee

MEMBERS are assured the highest quality judging through AHSA's judges' clinics program and the judges' evaluation program

MEMBERS are kept current on rules and items of interest through the official rule book and the AHSA's monthly publication "Horse Show"

MEMBERS have easy and rapid access to AHSA records as a result of the new, comprehensive computer program which employs in-house terminals

MEMBERS may participate in Horse of the Year Awards programs at both zone and national levels

MEMBERS elect zone representatives and members of the board

MEMBERS receive amateur certification and animal measurement cards at no charge

Become an AHSA member. Please fill out the attached form and mail it together with your dues. Make all checks payable to AHSA.

The American Horse Shows Association, Inc.
598 Madison Avenue, New York, NY 10022
Telephone: (212) 759-3070

Enclosed is my payment of $_____ for membership in the AHSA. (Membership expires November 30).

Life .....$450.00 Senior.....$25.00
Contributing. .$50.00 (Minimum) Junior (under 18 years)....$15.00

Juniors give date and year of birth _____

Name _____
FIRST MIDDLE INITIAL LAST

Address _____
NO. & STREET

_____
CITY STATE ZIP CODE

Telephone _____

BEST AVAILABLE COPY

Order of Dismissal in Galatz v. American Horse Shows Association, Inc., United States District Court, District of Nevada, Civil-LV 82-118, RDF

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
Las Vegas, Nevada

Civil-LV 82-118, RDF
MINUTES OF THE COURT
Dated: November 8, 1983

NEIL G. GALATZ and ELAINE GALATZ,

Plaintiffs,

vs.

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant.

PRESENT:

The Honorable Roger D. Foley
Senior United States District Judge

DEPUTY CLERK: Preston Bluiett, Jr.

REPORTER: None Appearing

COUNSEL FOR PLAINTIFF(S): None Appearing

COUNSEL FOR DEFENDANT(S): None Appearing

MINUTE ORDER IN CHAMBERS XXXX

IN COURT PROCEEDINGS:

This action having heretofore been noticed for dismissal for want of prosecution pursuant to Local Rule 22, and there being no objections filed,

IT IS ORDERED that this action is hereby dismissed as to all remaining parties for want of prosecution pursuant to Local Rule 22.

By: /s/ [illegible]
Deputy Clerk

Memorandum Opinion, Deborah Buchanan v. American Horse Shows Association, Inc., United States District Court, Western District of Virginia, Charlottesville Division, Civil Action No. 79-0031(C)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

Civil Action No. 79-0031(C)

DEBORAH BUCHANAN,

Plaintiff

—v.—

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant

MEMORANDUM OPINION

By: James C. Turk
Chief U. S. District Judge

The plaintiff, Deborah Buchanan, filed this suit alleging that the defendant, the American Horse Shows Association ("AHSA"), unlawfully prohibited her from showing and training horses for which wrongful acts she seeks compensation in excess of $10,000.00. The defendant has filed an answer and moves the court to dismiss the complaint on the grounds that it is not subject to the jurisdiction of this court. The issues have been briefed and argued by counsel, and the matter is ripe for disposition.

STATEMENT OF FACTS

The plaintiff, Deborah Buchanan, is a resident of Virginia, making her home at Keswick in Albemarle County. The defendant is a non-profit membership corporation organized under the laws of the State of New York.

Plaintiff was a trainer of show horses and a member of the AHSA. The plaintiff, as a trainer, showed the horse "Showoff" at the Ramblewood Christmas Show on or about December 17, 1977, in Aiken, South Carolina.

On November 10, 1978, Miss Buchanan was notified that the AHSA had received a charge that she had violated Rule III, Part I, Sec. IV of its rules on drugs and medications showing a horse under her charge, named "Showoff," at the Ramblewood Christmas Show after it had been drugged with a phenothiazine-type tranquilizer or derivative.[1]

The Hearing Committee of the AHSA held a hearing on November 10, 1978, in New York City, and after considering all the evidence, found the plaintiff guilty of the charges lodged against her. By letter dated December 12, 1978, Miss Buchanan was advised of the findings of the Hearing Committee and was suspended from the AHSA for six months beginning January 1, 1979, and was fined $1,000.00.

PERSONAL JURISDICTION

In order to acquire personal jurisdiction over the defendant, AHSA, plaintiff has relief upon service of process pursuant to the Virginia long-arm statute. See Va. Code Ann. § 8.01-328 *et*

---

1 The AHSA rule on drugs and medications provides in pertinent part that:

> (a.) No horse shall be shown in any class at a show recognized by the Association if it has been administered in any manner any forbidden substance.
>
> . . .
>
> (c.) Trainers, in the absence of substantial evidence to the contrary, are responsible for a horse's condition . . . .

seq. (1977 Replacement Vol.). The pertinent language of the statute, § 8.01-328.1, appears to be the following.

> A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of aciton arising from the person's
>
> 1. Transacting any business in this state; . . . .

The Virginia Courts, consistent with the due process requirements established by the United States Supreme Court,[2] have approached the issue of whether a corporation is transacting business for jurisdictional purposes on the basis of the corporation's contacts within the Commonwealth. The sufficiency of the contacts meeting "traditional notions of fair play and substantial justice," *International Shoe Company v. Washington, supra*, are determined by further reference to principles laid down by the United States Supreme Court and followed by the Virginia Supreme Court.

However, the only limitation put on the doctrine established in *International Shoe*, and followed by *McGee*, was that "it is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the foreign state, thus invoking the benefits and productions of its law." (357 U.S. 253, 78 S.Ct. 1240, 2 L.Ed. 1298, *Kolbe, Inc. v. Chromodern, Inc.*, 211 Va. 739 [1971]).

In light of these principles and after a thorough review of the record in this case, the court is constrained to conclude that the plaintiff, Deborah Buchanan, has failed to meet her burden of estasblishing this court's jurisdiction over the person of the AHSA. The record indicates that the AHSA is not licensed to do business in Virginia and has not transacted, does not

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2 *See International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) which held ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice. [Citing cases.]' "

transact, and is not transacting business in Virginia. Additionally, the AHSA maintains no place of business in Virginia; nor does it have employees, paid or unpaid, in Virginia. There are, however; dues-paying members, as well as corporate officers, who reside in Virginia. However, the mere presence of dues-paying members has been held to be an insufficient basis for exercising personal jurisdiction. *Friends of Animals, Inc. v. American Veterinary Hospital Association*, 310 F. Supp. 620 (S.D. N.Y. 1970). Further, the AHSA has not sold any products, provided any services for profit, or conducted any business in any way, such as to invoke the benefits and protections of the laws of Virginia. *c.f. Marston v. Gant*, 351 F. Supp. 1122 (E.D. Va., 1972); *Danville Plywood Corp. v. Plain & Fancy Kitchens, Inc.*, 218 Va. 533 (1977).

The court finds that the facts, as outlined above, make clear that the AHSA does not "do business" in Virginia for purposes of the assertion of personal jurisdiction over it. Further, the court finds that the facts likewise do not support the assertion of long-arm jurisdiction over the AHSA as there exists no purposeful activity by which the defendant invokes the benefits and protections of its laws. See *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1957), *rehearing denied* 358 U.S. 858 (1958).

For the reasons above, defendant's motion to dismiss the complaint for lack of personal jurisdiction shall be granted.

SUBJECT MATTER JURISDICTION

The United State Supreme Court has held that in actions of the type of issue (i.e. actions involving a non-profit corporation) the law of the state of incorporation should apply. *c.f. United Commercial Travelers v. Wolfe*, 331 U.S. 586, 67 S. Ct. 1355, 91 L. Ed. 1687 (1947). New York law, the law of the state in which the AHSA was incorporated, gives properly enacted by-laws the same force and effect as acts passed by the legislature.[3] In turn, the by-laws of the AHSA, having the

---

3 *See* New York, not-for-profit corporation law § 202(13). *Also see*: a by-law of a corporation enacted under express authority of an act of

same effect as state law, provide that any disputes arising between a member and the AHSA should be settled applying the law of New York.[4] Finally, the law of New York dictates that the proper procedure for the case at issue is to bring a New York CPLR § 7801 (Article 78) action.[5] This article is intended to be the vehicle whereby administrative actions are appealed. The New York courts have on several occasions reviewed actions filed against the AHSA under Article 78 proceedings and have sanctioned the use of Article 78 as the proper means of proceeding in suits of the type at issue here. *Jenkins v. AHSA*, 50 N.Y. App. Div. Rpts. 2d 652 (1967); *Denneay v. AHSA*, 83 N.Y. Misc. Rpts. 2d 846 (1975). Additionally, Federal District Courts have refused to hear a case based on diversity where the dispute could have been settled by bringing an Article 78 procedure in New York State Court. *Herrmann v. Brooklyn Law School*, 432 F. Supp. 236 (E.D.N.Y. 1976); *Ali v. State Athletic Commission of New York*, 308 F. Supp. 11 (S.D. N.Y. 1969).

The court now finds that an Article 78 proceedings against a non-profit corporation (e.g. AHSA) is designed to accommo-

---

the legislature, and being in conformity to the power conferred, has the same force as though it were enacted by the legislature. *Timolat v. S. J. Held Co.*, 17 Misc. 556, 40 N.Y.S. 692; *also see McDermott v. Board of Police*, 5 Abb. Prac. 422.

4 AHSA 1979 Rule Book Rule X. Protests, Charges and Hearings, Part VI *Application of Rules*. The construction or application of AHSA rules is governed by the laws of the State of New York.

5 Article 78 of the CPLR (N.Y. CPLR §§ 7801 to 7806) re-enacts Article 78 of the Civil Practice Act. Relief under this Article was "previously obtained by writs of certiorari to review, mandamus, or prohibition . . . ." N.Y. CPLR § 7801 (McKinney 1963). It provides for a special proceeding for the judicial review of action by "every court, tribunal, board, corporation, officer, or other person, or aggregation of persons . . . .", N.Y. CLPR § 7802(a) (McKinney 1963). It was enacted to simplify the procedure with regard to certiorari, mandamus, and prohibition and eliminate technical problems arising from distinctions between the remedies in granting relief where the petitioner showed he was entitled to some form of relief. *Herrmann v. Brooklyn Law School*, 432 F. Supp. 236, 239 (E.D. N.Y., 1976).

date to the state court system and is best suited for that system. The difficulty of adapting the pleadings and proceedings to the Federal Court system is symptomatic of the inappropriateness of its presence here. *Herrmann v. Brooklyn Law School, supra.* at 240.

For the reasons above, defendant's motion to dismiss the complaint for lack of subject matter jurisdiction will be granted.

An appropriate order will issue.

The clerk is directed to send certified copies of this Memorandum Opinion to all counsel of record.

ENTER: This 18th day of March, 1980.

/s/ JAMES C. TURK

Order of Dismissal, Judy Sinner and Kathleen Koons v. American Horse Shows Association, Inc., Superior Court of the State of Washington, County of Walla Walla, No. 84-2-00254-0

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

No. 84-2-00254-0

JUDY SINNER and KATHLEEN KOONS,

Plaintiffs,

vs.

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

Defendant.

ORDER DENYING PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

THIS MATTER having come on regularly before me for hearing, the undersigned Judge of the above-entitled Court, upon the Plaintiffs' Application for Temporary Restraining Order and for Injunctive Relief, the Plaintiffs being represented by R.F. Monahan of Roach, Votendahl & Monahan, and the Defendant appearing specially by its attorney, John W. Lohrmann of Freise, Lohrmann & Parker, the Court having reviewed the record and files contained herein, including the Complaint, Application and supporting Affidavits, and the Court having further reviewed the Defendant's Affidavit in Opposition to Application for Temporary Restraining Order, and cases annexed thereto, and the Court further having heard

the arguments of counsel, and the Court finding from a review of all argument and Affidavits that the contacts of the American Horse Show [sic] Association with the State of Washington are not sufficient enough to exercise this Court's jurisdiction without violating traditional notions of fair play and substantial justice, and the Court being in all things fully advised, it appearing that it is proper to enter this Order, it is hereby

ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Application for a Temporary Restraining Order and for Injunctive Relief is denied, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the Complaint of the Plaintiffs herein is dismissed for lack of jurisdiction.

DATED this 12 day of July, 1984.

/s/ YANCEY RESER
Judge of Superior Court

Presented by:

FREISE, LOHRMANN & PARKER

By /s/ _____
John W. Lohrmann
Attorney for Defendant

Copy Received and Presentment Waived:

ROACH, VOTENDAHL & MONAHAN

By /s/ _____
R.F. Monahan
Attorney for Plaintiffs

ATTEST TRUE COPY
This 12 Day of July 1984
PAMELA RAY, *Clerk*
Walla Walla County Superior Court
By /s/ [illegible] Deputy

Excerpts from 1980-81 Rule Book of American Horse Shows Association, Inc.

RULE II.—DUTIES OF SHOW OFFICIALS AND EMPLOYEES

. . .

Sec. 1. (a) Board of Directors. The Board of Directors of a Recognized Show, or the governing body in charge, shall be responsible for the operation of the show. They may act as a Committee of the whole or may appoint a Show Committee of at least three responsible people who must be available at all times to act in executive capacity. It shall be the duty of the Directors or their Show Committee to enforce all the rules of the Association from the time entries are admitted to the show grounds until their departure.

. . .

Sec. 2. Duties of Management. It shall be the duty of the Directors, their Show Committee and Show Manager to:

. . .

(e) See that animals required to be measured shall be correctly measured by the rules and to order the measurement of any horse whose height or length of foot is protested by an exhibitor.

Measurement shall take place immediately, to the end that there be no change by reshoeing. The decision of show officials shall not be reviewable by this Association. If the Steward feels that an injustice is done at the show he shall report the same to the Association.

. . .

RULE III.—CONDUCT OF RECOGNIZED SHOWS

. . .

Sec. 2. Measurement of Entries.

. . .

(d) The length of an animal's toe or height of heel may be protested by an exhibitor or questioned by a show official, who is not an exhibitor.

The following provisions for questioning the length of an entry's toe or height of heel shall apply:

(1) An exhibitor or trainer may protest the length of toe or height of heel of any entry in the same class in which he is showing. A show official, who is not an exhibitor, may question, without a charge, the length of toe or height of heel of any or all entries at any time.

(2) Should the length of toe or height of heel be questioned by a show official or protested by an exhibitor it shall be the duty of the show committee to have the official veterinarian and a Judge or Steward officiating in the show determine whether or not the limits are exceeded.

(3) If the limits are exceeded the entry shall be disqualified for the balance of the show and shall forfeit entry fees and winnings for the entire show

. . .

RULE X.—PROTESTS, CHARGES AND HEARINGS

. . .

Part II. Non-protestable Decisions.

The soundness of a horse, when determined by an official veterinarian of the show or by a judge, is not protestable.

A judge's decision, representing his individual preference, is not protestable unless it is alleged to be in violation of the rules.

A protest with respect to the height of a horse or the length of a horse's foot may only be made to the Committee of the show. Remeasurement shall take place immediately, to the end that there be no change in height by reshoeing. The decision of show officials shall not be reviewable by this Association. For method of measurement see Rule III, Part I, Sec. 2.

. . .

RULE XXV.—MORGAN HORSE DIVISION

Part I. General Qualifications.

. . .

■ *Sec. 3. Shoeing Regulations.* Except for weanlings and yearlings which must be shown barefoot, horses may be shod or barefoot. If shod, shoes must be open heeled without bars, turnbuckles and bands. Weight attached to the exterior of the hoof or pad is prohibited. In all Pleasure and Stock Horse classes shoes including pads must not exceed *16 oz.* and the length of toe must not exceed 4¾". In all classes other than Pleasure and Stock there is no specific shoe weight limits but the length of toe must not exceed 5¾" including pad and shoe. The length of toe and weight of shoe including pad for "In Hand" classes must not exceed the maximums. See Rule III, Part I, Secs. 3 and 9.

At an All Morgan show all champions and reserve champions must have one foot measured immediately upon leaving the ring.

Supreme Court, U.S.
FILED
DEC 3 1984
ALEXANDER L. STEVAS
CLERK

(2)

No. 84-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN HORSE SHOWS ASSOCIATION, INC.,
Petitioner,

—v.—

NEIL G. GALATZ AND ELAINE GALATZ,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEVADA

RESPONDENTS' BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

QUESTION PRESENTED

Does Nevada's exercise of personal jurisdiction over a nationwide association present an important, unresolved question of constitutional law where the association is sued for breach of a contract with substantial Nevada contacts and for tort and defamation, where the injuries are foreseeably felt in Nevada?

PARTIES

The parties participating in the proceedings before the Supreme Court of Nevada were Neil G. Galatz and Elaine Galatz, petitioners for writ of mandamus to the Eighth Judicial District Court of the State of Nevada, nominal respondent, and American Horse Shows Association, Inc., the real party in interest. The Eighth Judicial District Court did not participate other than through the real party in interest. The relationship of these two parties was not adversarial.

Correspondingly, the caption styled by the American Horse Shows Association, Inc., is inappropriate, as it depicts the state trial court as a respondent herein. Respondents GALATZES have corrected the caption on this brief.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-708

AMERICAN HORSE SHOWS ASSOCIATION, INC.,
Petitioner,

—v.—

NEIL G. GALATZ AND ELAINE GALATZ,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEVADA

RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Nevada granting a writ of mandamus is reported at 100 Nev. Adv. Op. No. 86, 683 P.2d 26 (July 3, 1984) and is annexed as an appendix to the Petition. (Pet. at 1a.) No party petitioned the Nevada Supreme Court for rehearing. The order of the Eighth Judicial District Court, State of Nevada, quashing service of Respondents' complaint and summons is unreported and is annexed to the Petition. (Pet. at 10a.)

STATEMENT OF THE CASE

This case arises from a complaint filed by Respondents GALATZES, alleging breach of contract and tortious harm to their Nevada horse breeding and raising business. Respondents are members[1] of the Petitioner American Horse Shows Association, Inc. ("AHSA"). As members, Respondents are subject to and benefit from AHSA rules.

The GALATZES' AHSA membership applications and dues were sent from Nevada, the state of Respondents' residence and horse business. The GALATZES have been AHSA members since about 1976.

The Petitioner AHSA holds itself out as a nation-wide organization for the benefit of horse enthusiasts. AHSA, by its constitution, serves to make rules governing horse competitioners, to license judges, to adjudicate questions of rules violations and generally to assist in exhibition of horses. (AHSA Constitution, Article II[b], [c], [e] and [q].) The functions performed by AHSA in the forum, as found by the Nevada Supreme Court, include:

> For example, in 1981, AHSA had 278 members in Nevada; AHSA collected $6950 in dues from those Nevada members and collected $21,424 from participating non-members. Further, AHSA had seven registered judges and seven certified stewards residing in Nevada, and recognized 24 horse shows held in Nevada. AHSA also mailed membership-related materials into Nevada, as well as prize lists, premium lists, the "Horseshow Magazine," AHSA's 1981 rule book, amateur cards, entry blanks, membership applications, and

---

[1] Respondents' pertinent capacity is as AHSA members. Petitioner's repeated description of Mr. Galatz as an attorney is relevant only to the fact that Respondents may have been able to pursue this litigation while others could not. Consequently, Respondents will be referred to herein as Members Galatzes.

advertisements promoting AHSA. Finally, AHSA apparently selected and paid for veterinarians to test for drugs at five Nevada horse shows.

AHSA's contacts are more fully set out in this opposition, *infra* at 6 through 13.

The instant litigation arose in May 1981, when Members GALATZES attended an AHSA-sanctioned horse show, the Morgan Classic Royale in Santa Rosa, California. There the GALATZES entered a Morgan horse, "Jade's Hot Shot," in the show. The horse won the competition in its class, but subsequently was disqualified because the horse's hoof was mismeasured as being too long. Members allege, among other things, that measurements were taken by means which violated AHSA Rules.

The AHSA Members logged with the show committee an immediate protest, involving numerous violations of AHSA Rules. The protest was ignored and was never brought to hearing. The GALATZES then entered the same protest to the American Horse Shows Association, Inc., itself. By letter, the AHSA informed the GALATZES that the AHSA Hearing Committee met on June 10, 1981, and decided that the GALATZ protest was not appealable.

The GALATZES then brought suit in state court, claiming that AHSA violated its constitution and rules by failing to investigate, to hold a hearing and to rule upon the matter. This violation, the GALATZES averred, caused damages including costs of participating in the AHSA-recognized show, damage to the reputation of the horse as a performance and breeding stallion, and embarrassment and public humiliation to the GALATZES. The members prayed for damages in excess of $3,000, but less than $10,000.[2]

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[2] AHSA in its petition appears to argue the merits of the case, going far beyond the complaint, the service of which it wishes to quash. Petitioner's argumentative portrayal is irrelevant to the only issue before the state appellate court: Nevada's jurisdiction over the Petitioner AHSA.

THE PROCEEDINGS BELOW

Before the state trial court, AHSA specially appeared and moved to quash service of summons and complaint, claiming that Nevada lacked *in personam* jurisdiction over it. The Eighth Judicial District Court agreed and granted the motion.

The GALATZES then filed with the Supreme Court of Nevada a petition for writ of mandamus, seeking, in effect, a reversal of the trial-level court. The Nevada Supreme Court issued the writ.

The state's high court found that AHSA was, indeed, transacting business within the meaning of the Nevada long-arm statute, N.R.S. 14.065 (2). The Court based this conclusion on, first, the AHSA's generally extensive contacts with Nevada and, more importantly, on the specific relationship those contacts bore to the instant litigation. The Nevada Supreme Court expressly held that "... the cause of action does appear to arise from AHSA's activities in Nevada." 100 Nev. Adv. Op. 86 at 4, 683 P.2d at 29, Pet. at 6a.

No rehearing was requested. The present petition for certiorari followed.

REASONS FOR DENYING THE WRIT

THIS CASE PRESENTS NO UNRESOLVED IMPORTANT QUESTION OF CONSTITUTIONAL LAW

The only question here is whether Petitioner AHSA maintained sufficient contacts with the forum to be susceptible to

in personam jurisdiction[3] in a suit for breach of contract and for business defamation.

This Same Issue Was Resolved By This Court Last Term.

AHSA contends that this petition would present issues of specific jurisdiction left unanswered in *Helicopteros Nacionales de Colombia v. Hall*, 52 U.S.L.W. 4491 (1984). More correctly, this case recites questions fully resolved by two other October 1983 term decisions, *Keeton v. Hustler Magazine, Inc.*, 52 U.S.L.W. 4346 (1984) and *Calder v. Jones*, 52 U.S.L.W. 4349 (1984).

Decisions applying the Due Process Clause of the Fourteenth Amendment often turn on a "weighing of facts." *Helicopteros Nacionales de Colombia v. Hall, supra* at 4494 (Brennan, J., dissenting); *see, Kulko v. California Superior Court*, 436 U.S. 84, 92 (1978); *id.*, at 101-102 (Brennan, J., dissenting). The facts in this case make clear that AHSA transacts business in Nevada and that this cause of action arises from or is related to those Nevada activities. Therefore, personal jurisdiction is established.

AHSA Was Transacting Business.

In evaluating minimum contacts, the focus is properly on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). AHSA's conduct towards its members, the GALATZES, centers around Nevada. Indeed, "Plaintiff's residence may well play an important role in

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[3] Certain minimum contacts by a defendant with the forum are required to achieve personal jurisdiction over that defendant under the Due Process Clause of the Fourteenth Amendment. The Nevada long-arm statute reaches the outer limits of Federal Constitutional Due Process. *Certain-Teed Products Corp. v. Second Judicial District Court*, 87 Nev. 18, 479 P.2d 781 (1975).

determining the propriety of entertaining a suit against the defendant in the forum." *Keeton*, 52 U.S.L.W. at 4348. Plaintiff's residence, as here, may be the focus of the activities of the defendant out of which the suit arises. *See Calder v. Jones, supra; McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957).

This Court has upheld jurisdiction where the only act within the forum consisted of mailing an insurance policy to and receiving premiums from an insured resident. *See McGee v. International Life Insurance Co., supra.* In comparison, the AHSA has admitted to performing many acts in Nevada. It conceded in discovery and the GALATZES proved the following Nevada contacts:

1. There were 278 members of AHSA in Nevada in 1981.

2. AHSA collected $6,950.00 in dues from its members in Nevada in 1981.

3. There are seven AHSA Registered Judges in Nevada.

4. The Nevada AHSA Registered Judges paid $60.00 in initial fees to AHSA in 1981.

5. The Nevada AHSA Registered Judges paid $250.00 in 1981 to AHSA for renewal and division fees.

6. There are seven AHSA certified stewards in Nevada.

7. The Nevada AHSA certified stewards paid $70.00 to AHSA in 1981 for renewal fees.

8. $21,424.00 was received by AHSA in 1981 from non-AHSA members participating in AHSA-recognized shows held in Nevada.

9. In 1981 AHSA was paid $545.00 for guest cards issued to judges for shows held in Nevada.

10. $1,985.00 was paid to AHSA by Nevada Horse Shows in 1981 for fees based on prizes offered at Nevada Horse Shows.

11. AHSA provides through the mail to its Nevada members responses to inquiries concerning interpretation of its rules.

12. Twenty-four AHSA recognized shows were held in Nevada in 1981.

13. AHSA requires each Nevada show which desires recognition to secure AHSA's approval of the dates upon which the show will be held. The show in applying for dates agrees:

> "In applying for the above dates this show agrees to abide by the rules of the AHSA and understands that failure to do so constitutes a violation of the rules which may subject the show to penalty under the provisions of Rule XI, Part II, Sec. 2' (Rule 1, Part 1, Sec. 21)."

14. Each and every month AHSA mails "Horseshow Magazine" to its Nevada members.

15. AHSA mails each year its Rule book to its Nevada members.

16. AHSA assessed and collected drug fees for all horses shown in all 24 AHSA recognized shows held in Nevada in 1981.

17. $4,821.00 was collected by AHSA for drug fees in 1981 at only nine out of 24 shows held in 1981. The total amount paid to AHSA from the remaining 1981 Nevada shows is not known to counsel at this time, but if averages based on the known figures are used, AHSA received an additional $8,070.00 in drug fees in Nevada in 1981.

18. The AHSA selected and paid veterinarians in the state of Nevada to check on drugs at five Nevada shows in 1981.

19. The AHSA hears appeals arising from protests of exhibitors and complaints against rules arising from horse shows in Nevada and California.

20. Upon appropriate findings AHSA disciplines exhibitors, trainers and shows for infractions of rules occurring at shows held in Nevada.

21. Funds, support and assistance for equestrian events at the Olympics, Pan American Games and other international competitions are solicited by AHSA in Nevada.

22. The AHSA-recognized horse shows held in Nevada in 1981 were each supplied with a pamphlet containing guidelines prepared and distributed by AHSA, setting forth for each show manager the AHSA guidelines.

23. Stewards and technical delegates, pursuant to AHSA requirements, sent reports following each of the 24 shows held in Nevada to AHSA in 1981.

24. Prize lists and official show results were sent to AHSA, pursuant to AHSA requirements, by show management 24 times in 1981, sent following each recognized show.

25. AHSA issues to the Nevada AHSA members amateur cards which qualify them to compete in classes restricted to amateurs.

26. For a charge of $20.00 per card, AHSA issues amateur cards to Nevada domiciliaries who are not AHSA members.

27. Additional fees are authorized to be charged and collected by AHSA from shows, clubs and persons resident in Nevada for each of the following purposes:

(a) Change of a horse's name;

(b) Change of a show's name;

(c) Recording leases on horses;

(d) For medal classes;

(e) For protests;

(f) For recording horses; and

(g) For registration of stable and farm names.

Respondents unfortunately cannot provide the Court with the amounts of fees since AHSA did not answer fully the pertinent Interragatory 31 nor did AHSA produce the financial statements requested by Plaintiffs.

28. While AHSA apparently has not held conventions, seminars or clinics in Nevada, it does invite Nevada AHSA members to attend these events which are held periodically all around the United States of America.

29. AHSA publishes calendars of AHSA recognized shows which are distributed to its 278 Nevada members.

30. Names of Nevada residents and their horses which are suspended by AHSA are published and disseminated to all AHSA members throughout all 50 states.

31. AHSA provides to AHSA members show report and judge evaluation forms for use by its members (including those in Nevada). These forms are returned to AHSA. To provide ". . . information as to the conduct and facilities at member shows, the show standards committee urges . . . [AHSA members] to fill [in] . . . the questionnaire . . . [to] enable the [AHSA] committee to evaluate the quality of each show."

32. AHSA does advertise in Nevada. All other AHSA recognized show premium lists carry a pitch for and application for membership in AHSA. AHSA has further advertised in Nevada through "Horseshow Magazine" and advertising circulars.

AHSA has carried on activities in Nevada as set forth above for many years.

AHSA has purposely availed itself of the privilege of acting in the forum by accepting the GALATZES' entry blanks and fees from Nevada, by holding "recognized" shows in Nevada and using that State's parks and recreational facilities, not to mention its policing powers, for those shows.

AHSA had direct contact with Respondents by the following means:

1. Membership in AHSA.

2. Payment of dues for AHSA.

3. Consultation with and being judged by Nevada and other AHSA recognized judges.

4. Showing at shows officiated by resident and non-resident AHSA certified stewards.

5. Participating in numerous shows in and outside Nevada at which non-AHSA members were required to pay fees.

6. Participation in and outside Nevada in shows at which the judges were issued AHSA guest cards.

7. Payment by Respondents of show entry fees in and outside Nevada which, in part, were remitted to AHSA for fees based on prizes offered at such shows.

8. Reliance upon AHSA Rule interpretations and opinions.

9. Participation in shows in and outside Nevada because of the assurance they were recognized by and governed by the Rules of AHSA.

10. Receipt of "Horseshow Magazine" each month by Respondents.

11. Receipt of and reliance upon the AHSA Rule Book in determining proper procedure and conduct at shows.

12. Payment of drug fees to AHSA both in and outside Nevada for each horse shown at each show. ch show.

13. Respondents' horses have been drug checked by veterinarians selected by and paid by AHSA.

14. Respondents have attempted, as alleged in their complaint in this action, to utilize the AHSA protest and appeal procedure by mailing from Nevada to AHSA their protest and appeal.

15. Respondents have followed and relied upon the AHSA published reports concerning penalties and suspensions of horses, exhibitors and officials.

16. Respondents have received AHSA-sponsored award information and invitations to participate in such awards.

17. Respondents have received invitations to attend AHSA conventions, clinics and seminars.

18. Respondents hold and have used their AHSA amateur cards repeatedly both in and outside the State of Nevada so as to be able to participate in AHSA recognized shows.

19. Respondents read and utilize the AHSA published calendar of horse shows in planning their show season and activities.

20. Respondents have often mailed to AHSA from Nevada the AHSA show report and judge evaluation questionnaire.

21. Respondents have availed themselves of the opportunity to participate in AHSA Rule revision procedures.

The Cause Of Action Arises From Or Relates To AHSA's Nevada Business.

It is beyond doubt that a forum has a significant interest in redressing injuries that actually occur within the state. *Keeton v. Hustler,* 52 U.S.L.W. at 4347. Just as in *McGee v. International Life Insurance Co, supra,* and *Calder v. Jones, supra,* AHSA's activities from which the action arose converge in Nevada.

As in *McGee,* the contractual relationship between the parties was initiated by application and payment from the forum. As found by the Nevada Supreme Court, "AHSA solicits members, such as [the GALATZES], for its organization in Nevada; presumably those members join the AHSA in reliance upon its constitution and rules." (Pet. at 5a-6a.)

By lending its name to the Morgan Classic Royale, AHSA has assured the GALATZES, as Nevada residents deciding whether to travel to California, that the show would be held in accordance with the Association's standards and rules. Respondents in determining to enter the Morgan Classic Royale and other shows relied upon:

1. AHSA assured that the show would be governed by AHSA Rules.

2. AHSA assured that the show would be officiated by judges and stewards certified and recognized by AHSA as qualified.

3. Respondents paid from Nevada $299.00 in fees for the Morgan Classic Royale which, in part, was remitted to AHSA for charges based upon prizes offered at the Morgan Classic Royale.

4. Respondents, upon entering the Morgan Classic Royale, authorized their trainer to agree to the terms and conditions of entry prescribed by AHSA on the Morgan Classic Royale entry blank.

5. Respondents were solicited to attend the Morgan

Classic Royale in Nevada and were "assured" among other things by the show with AHSA approval of:

(a) ". . . the highest degree of fairness and equality . . .."

(b) ". . . the right to appeal to . . . (AHSA)"

(c) ". . . the highest quality of judging . . ."

6. "Jade's Hot Shot," the stallion whose prize was recalled and who is the basis of this suit, has been held out and advertised as standing at stud both verbally and in show programs published and disseminated in Nevada.

Further, AHSA offered to Respondents remedies and procedures to follow to ensure proper policing of horse shows by the Association. When the Galatzes tried to utilize such procedures from Nevada, they were denied relief.

Consistent with *Calder,* personal jurisdiction is also established in Nevada because, although the AHSA's tortious and defamatory acts may have been committed elsewhere, their effects were felt in the forum, home to the GALATZES and their horse ranch. The damages claimed by the Respondents include the impairment of the value of the horse for breeding purposes, the impairment of the sale value of the stallion, and humiliation and embarrassment caused to Respondents by having the prize recalled and being accused of violating the AHSA Rules. Respondents have been called upon to explain the events occurring at the Morgan Classic Royale to other horse owners and breeders in Nevada, many of whom are potential customers of Respondents.

The tortious conduct by AHSA impugned the professionalism of the GALATZES as horsemen and breeders. The injury, both to Respondents' business reputation and to the value of their horse as an investment, was suffered in Nevada. Jurisdiction over Petitioner is, therefore, proper in Nevada based upon the "effects" there of AHSA's conduct, whether that conduct be construed as

taking place in Nevada, California or New York.[4] AHSA knew that the brunt of its tortious denial of members' rights would be felt by the GALATZES in the state in which they live and work. Compare, *Calder v. Jones,* 52 U.S.L.W. at 4351. The foreseeable effect was to cause injury to the GALATZES in Nevada "regardless of any metaphysical locus of breach or conspiracy." *Tauber v. Girard,* 655 F.2d 991 (9th Cir. 1981), relying on *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980).

Nevada Jurisdiction Was Reasonably Foreseeable.

As Petitioner AHSA has deliberately exploited the Nevada membership market and then has allegedly reneged on its membership arrangement with Nevada citizens, it must "reasonably anticipate being haled into court there" to answer for its representations, its omissions and the resulting injuries. *See World-Wide Volkswagen Corp. v. Woodson, supra* at 297. A member defamed and injured in Nevada need not go to New York to seek redress for intentional conduct, such as AHSA's denial of a hearing, where the repercussions are foreseeably felt in Nevada.

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4 As stated by the American Law Institute:

> Every state has a natural interest in effects occurring within its territory, even if the act causing those effects was committed elsewhere . . .
>
> If a defendant commits an act or omission outside the forum state with the intent to cause a tortious effect within the state, the state may exercise jurisdiction over the defendant as to any cause of action arising from the effects. The intent to cause tortious injury within the state when the tort actually occurs is generally a sufficient basis, without more, for the exercise of *in personam* jurisdiction. "The act may have been done with the intention of causing effects in the state. If so, the state may exercise the same judicial jurisdiction over the actor, or over the one who caused the act to be done, as to causes of action arising from these effects as it could have exercised if these effects had resulted from an act done within its territory."

Restatement 2d, *Conflict of Law,* §*37, com. a; quoted in Jones v. Calder, 138 Cal. App. 3d 128, 187 Cal Rptr. 825 (1982), aff'd, Calder v. Jones,* 52 U.S.L.W. 4349 (1984).

These Nevada residents would be at a severe disadvantage if they were forced to follow the association to a distant forum in order to hold it legally accountable. As explained by Justice Black, "When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum – thus in effect making the company judgment proof." *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957).

The Nevada Court stated it succintly: "AHSA's action of encouraging, promoting and soliciting members in Nevada, coupled with the other activities and contacts mentioned above, are such that AHSA should have reasonably anticipated that it might be subject to litigation in this state." 683 P.2d at 29. AHSA has formed bonds with the forum through its membership activities. The violation of those bonds, with corresponding injuries felt in the forum, establish sufficient nexus between AHSA and Nevada for personal jurisdiction.

AHSA overinflates its arguments, however, claiming that the state court decision stands for the proposition that a corporation is subject to general jurisdiction wherever a member resides. This was not the conclusion of the Nevada Court. The Court stated simply that the Members GALATZES' action for a specific breach of the Association constitution arose from the AHSA's contacts with Nevada. The breach, moreover, was directed specifically at the Nevada members.

This case squarely presents the issues of specific jurisdiction, which were evaluated and clarified in *Keeton* and *Calder.* To use the words of Justice Brennan, "These contacts between the [defendant] and the forum state are sufficiently important and sufficiently related to the underlying cause of action to foreclose any concern that the constitutional limits of the Due Process Clause are being violated." *Keeton v. Hustler Magazine, Inc.*, 52 U.S.L.W. at 4349 (Brennan, J., concurring).

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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